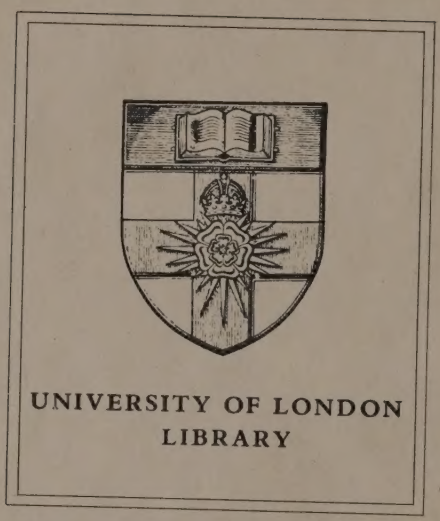
THIS BOOK
MUST NOT BE REMOVED
FROM THE LIBRARY

UNIVERSITY OF LONDON LIBRARY

REFERENCE ONLY

PARL. PAPERS
R REFERENCE ONLY.



609665

REPORTS

FROM

COMMITTEES:

SEVEN VOLUMES.

—(5.)—

LAND ACTS (IRELAND).

Session

12 *March* 1894——25 *August* 1894.

VOL. XIII.

1894.

BIBL. LONDIN. UNIV

REPORTS FROM COMMITTEES:

1894.

SEVEN VOLUMES:—CONTENTS OF THE

FIFTH VOLUME.

N.B.—*THE* Figures *at the* beginning of the line, *correspond with the* N° *at the foot of each* Report; *and the* Figures *at the* end of the line, *refer to the* MS. Paging *of the Volumes arranged for the House of Commons.*

LAND ACTS (IRELAND):

310. Report from the Select Committee on Land Acts (Ireland); with the Proceedings of the Committee, Minutes of Evidence, Appendix, and Index. p. 1

REPORT

FROM THE

SELECT COMMITTEE

ON

LAND ACTS (IRELAND);

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

APPENDIX, AND INDEX.

Ordered, by The House of Commons, *to be Printed*,
20 *August* 1894.

LONDON:
PRINTED FOR HER MAJESTY'S STATIONERY OFFICE,
BY EYRE AND SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

And to be purchased, either directly or through any Bookseller, from
EYRE AND SPOTTISWOODE, East Harding Street, Fleet Street, E.C.,
and 32, Abingdon Street, Westminster, S.W.; or
JOHN MENZIES & Co., 12, Hanover Street, Edinburgh, and
90, West Nile Street, Glasgow; or
HODGES, FIGGIS, & Co., Limited, 104, Grafton Street, Dublin.

310.

Land Acts (Ireland).

Ordered,—[*Monday*, 16*th April* 1894]:—That a Select Committee be appointed to inquire into and report upon the principles and practice of the Irish Land Commissioners and County Court Judges in carrying out the Fair Rent and Free Sale Provisions of the Land Acts of 1870, 1881, and 1887, and of the Redemption of Rent Act of 1891, and to suggest such Improvements in Law or Practice as they may deem to be desirable.

Ordered,—[*Tuesday*, 24*th April* 1894]:—That the Committee on Land Acts (Ireland) consist of Seventeen Members.

Committee nominated of—

Mr. Brodrick.
Mr. Carson.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. Robert Reid.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.
Mr. Wharton.

That the Committee have power to send for Persons, Papers, and Records.

That Five be the Quorum of the Committee.

[*Thursday*, 3*rd May* 1894]:—New Writ for Dumfries District of Burghs, in the room of Robert Threshie Reid, Esq., Q.C., Her Majesty's Solicitor General.

Ordered,—[*Wednesday*, 23*rd May* 1894]:—That the Select Committee on Land Acts (Ireland) do consist of Seventeen Members.

That Mr. Solicitor General be added to the Committee.

REPORT - - - - - - - - - - - - - - p. iii
PROCEEDINGS OF THE COMMITTEE - - - - - - p. xxiv
MINUTES OF EVIDENCE - - - - - - - - - p. 1
APPENDIX - - - - - - - - - - - - - - p. 653
INDEX - - - - - - - - - - - - - - - p. 745

REPORT.

THE SELECT COMMITTEE appointed to inquire into and report upon the Principles and Practice of the IRISH LAND COMMISSIONERS and COUNTY COURT JUDGES in carrying out the Fair Rent and Free Sale Provisions of the Land Acts of 1870, 1881, and 1887, and of the Redemption of Rent Act of 1891, and to suggest such Improvements in Law or Practice as they may deem to be desirable;——HAVE agreed to the following REPORT:—

No Select Committee of this House has previously inquired into the working of the Irish Land Acts. A Committee of the House of Lords in 1882–83 met to consider the working of the Land Act of 1881, and a Royal Commission was appointed in 1887 to examine into the Irish Land system, and much evidence was taken by both bodies. Your Committee, however, sat under more narrow terms of reference, and accordingly devoted its entire time, except the last three sittings, to hearing purely official witnesses. At the last three sittings certain evidence was received on behalf of the Irish landlords, but, with this exception, no other than official evidence has been taken. No witness on behalf of the tenants was therefore heard, as your Committee considered it expedient, instead of investigating allegations of individual grievance, whether on the part of tenants or owners, to obtain a general view of the principles and practice, decisions and procedure, from the examination of the Judges and officials who administer the Irish Land Acts. A small group of witnesses on either side could not have materially widened the basis for trustworthy conclusions. To have gone beyond a small group, would have been to involve your Committee in an inquiry hardly less in scope and magnitude than the Devon, the Cowper, or the Bessborough Commissions, and could have added little new light to the testimony of those who are concerned in giving to the administration of the Land Acts the operative form upon which the Committee was appointed to report.

Character of Evidence.

Land Tenure in Ireland rests upon four principal Acts, those of 1860, 1870, 1881, and 1887. With the Act of 1860 your Committee was not concerned. It regulates the relation of landlord and tenant on the basis of contract, and cannot be said to invest the status of the tenant with any legal privileges.

The Act of 1870, broadly speaking, seeks to protect the tenant's interest in Ulster by legalising the Ulster custom, and elsewhere in Ireland by enabling the tenant (except in certain excluded cases), if evicted capriciously, to sue his landlord for compensation for disturbance according to a certain statutory scale limited in amount, and, on quitting his holding, whether voluntarily or as the result of eviction, to sue for the unexhausted value of certain limited classes of improvements. This Act is no longer much resorted to since the passing of the Land Act of 1881, which gave durability of tenure to the tenant so long as his rent is paid, and enabled him to apply to the Court to fix his rent every 15 years. The Act of 1870, however, by its terms, powerfully affects the Act of 1881, because its definitions are incorporated therein, and the far-reaching decision of Adams *v.* Dunseath turned on this incorporation of definitions. The Act of 1870 included in its general scope all holdings of an agricultural or pastoral character, but the clause in it which did most to protect the tenant's tenure, namely, that granting compensation for disturbance in the case of capricious eviction, was much more limited, there being a series of exclusions from it whereby certain classes of holdings, such as town parks, demesne lands, grazing lettings, and others which will be afterwards more fully referred to, were excepted from its provisions. These exclusions were re-enacted as regards the tenure clauses of the Act of 1881, and the time of your Committee was largely occupied in considering the effect of the decisions of the Courts on these exclusions, as well as on the question of tenants' improvements. Before discussing, however, these important subjects, it will be convenient to survey the course of administration and procedure.

The Act of 1870.

Effects upon Act of 1881.

10 *L.R.I.* 109.

Fair Rent Provisions: Extent of Operations.

Number of agricultural holdings. No. 260 of 1891.

The number of agricultural holdings in Ireland was stated in the census of 1891 to be 486,865. The total number of holdings in Ireland, extracted from the agricultural statistics, was set down in a recent Parliamentary Paper at 552,349. Either of these totals would, no doubt, include some 30,000 holdings purchased by the occupying tenants under the provisions of the several statutes passed from 1869 to 1891.

Applications. *See* last Report of the Land Commission, 10144 *et seq.*

The total number of fair-rent applications disposed of, by the Land Commission, by the County Courts and by agreement, from the passing of the Act of 1881 to the 31st of March last, was 354,890. The number of these cases "struck out," "withdrawn," or "dismissed," was 60,236, of which about 8,000 were dismissed for various causes, but usually because the applicant was held to be without the requisite legal status, or the holding was declared to be excluded from the operation of the provisions relating to fair rent. The remainder of these 60,236 cases were either struck out or withdrawn. In the former class of cases the applicant did not appear when the case was called; in the latter, he intimated that he would not proceed.

Struck out withdrawn, or dismissed.

Total number of fair rents fixed.

Deducting the 60,236 cases "struck out," "withdrawn," or "dismissed," from the gross total of applications, 354,890, we find the total number of fair rents fixed to be 294,654. Of these, 157,178 were fixed by the Land Commission Courts, 15,537 by the County Courts, 121,902 by agreements between the landlord and the tenant lodged with the Land Commission or the County Courts, and only 37 by arbitration under Section 40 of the Act of 1881.

Section 40.

It is worthy of notice that in these 37 cases in which rents have been fixed by arbitration, the average reduction was 30·7 per cent., or one-half higher than the average reduction on the total rental dealt with by the Courts and by agreements, which was 20·8 per cent. But the fact that arbitration has been resorted to in only 37 cases, not one of which occurred within the last four years, proves that Section 40 of the Act has been practically inoperative.

Sections 10, 11, and 12.

In this connection it may also be observed that, under Section 10 of the Act, only 133 judicial leases have been executed, and, under Sections 11 and 12, no more than 36 fixed tenancies have been created.

Rents fixed by the Land Commission.

Of the cases, 157,178 in number, in which fair rents have been fixed by the Land Commission, 4,129 were fixed on consent directly by the Chief Commission, and of these 363 were yearly tenancies, 2,367 leasehold tenancies, 8 under the Redemption of Rent Act, 1891, and 1,391 in which rents were fixed on the reports of valuers appointed on the application of the parties. The number of rents fixed by Sub-Commissioners was 153,049, of which 132,111 were yearly tenancies, 20,639 leasehold tenancies, and 299 Redemption of Rent Act cases.

Average reduction.

The average reductions granted were as follows:—

On reports of valuers, 19·9 per cent.

By Chief Commission and Sub-Commission taken together: for yearly tenancies, 21·2 per cent.; for leasehold tenancies, 24·7 per cent., and in cases under the Redemption of Rent Act, 1891, 25 per cent.

County Courts.

The number of originating notices lodged with the County Courts was 34,453; but, under the power given by Section 37, Sub-section 4, of the Act of 1881, authorising the Land Commission, on the application of any party to proceedings in the County Courts, to transfer such proceedings from the County Court to the Land Commission, no fewer than 10,374 of the 34,453 cases initiated in the County Courts were transferred to the Sub-Commissions. The originating notice was usually lodged by the tenant; the application to transfer the proceedings was usually made by the landlord.

Average reduction.

The transfer to the Sub-Commission of 10,374, out of the 34,453 originating notices lodged with the County Courts, left 24,079 cases to be disposed of by those tribunals. Of this total, rents were fixed in 15,537 cases; 13,585 being yearly tenancies and 1,952 leasehold tenancies. The average reduction of rent for the yearly tenancies was 23·4, or 2·2 more than the corresponding reduction (21·2) given by the Land Commission Courts. The average reduction for leasehold tenancies was 30, being 3 per cent. more than the corresponding reduction (24·7) in the Courts of the Land Commission.

Appeals

Appeals to the Land Commission against the decisions of the County Courts were lodged in 4,097 of the 15,537 cases; and of these, 1,515 were withdrawn and 2,192 have been heard. The result of these appeals was an average increase of 3·1 per cent. in the rents as fixed by the judgments of the County Courts.

Deducting from 24,079 cases left to be disposed of by the County Courts, 15,537 in which rents were fixed by those tribunals, there remain to be accounted for 8,542 cases.

Cases undisposed of

Of these, 3,413 are said to have been "dismissed, struck out, or withdrawn," leaving undisposed of 5,129. It appears, however, from a return furnished by the Lord Chancellor to the Land Commission, that the real number undisposed of is only 214, and the difference is due to the failure of the Clerks of the Peace to discharge the duty laid upon them to furnish the Land Commission with certified copies of all orders made in fair-rent cases by the County Court Judges. Your Committee trust that these orders will be furnished, and that in future this duty will be properly discharged.

Rents fixed by agreement.

Of the cases, 121,902 in number, in which rents were fixed by agreements between landlords and tenants, 114,724 were fixed by agreements lodged with the Land Commission, and 7,178 by agreements lodged with the County Courts. The particulars of these agreements supplied in the annual reports of the Land Commission do not distinguish, as in the case of rents fixed by the Courts, between yearly and other tenancies.

Average reduction.

It is shown, however, that the average reduction in the former rents made by agreements lodged with the Land Commission has been 17·7, as against 21·2 for yearly tenancies, 24·7 for leasehold tenancies, and 25·0 under the Redemption of Rent Act, in cases decided by the Chief Commission and Sub-Commissions; and 19·9 in cases in which rents were fixed on the reports of valuers appointed upon the applications of the parties. The average reduction made by agreements lodged with the County Courts was 17·2, as compared with 23·4 for yearly tenancies, and 27·7 for leasehold tenancies in cases heard and determined by the County Courts.

Rents by Arbitration.

There is to be observed a still more remarkable difference between the reductions made in rents fixed by agreement and those settled by arbitration. As we have noted, the average reduction made by agreements lodged with the Land Commission was 17·7, and with the County Courts 17·2, but the average reduction was no less than 27·7 in cases of rents determined by arbitration. By far the greater number of the 121,902 agreements were made between 1881 and 1885, when the reductions in the Courts were much smaller than in subsequent years and down to the present time. The agreements lodged—

In the year to August 1882 were 12,485;
In the year to August 1883 were 36,005;
In the year to August 1884 were 24,094;
In the year to August 1885 were 11,656;

making for the first four years a total of 84,240, or more than two-thirds of the whole number of agreements.

Rents from 1881 to 1885.

The evidence given before your Committee as to the course of prices and the cost of production, proves that the rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive. This observation is applicable in a still stronger degree to the agreements made before 1886, because the reductions secured were more limited in amount, as we have already shown, than those obtained within the same period from the Courts.

Appendix, No. 7, Table V. Agreements, 1882–7.

Your Committee beg to direct attention to a Paper handed in by Mr. W. F. Bailey, Legal Assistant Land Commissioner. It furnishes examples of 50 cases in his district in which agreements had been made between landlords and tenants, within the period from 1882 to 1887, but the agreements not having been filed, as required by rule, were not binding between the parties, and the tenants came into Court to have fair rents fixed in 1893 and 1894. The result demands particular attention. The old rents in the 50 cases had amounted to 790*l.* The reductions made by agreement amounted to 142*l.*, leaving the rents as agreed upon 648*l.* When the tenants came into Court the 648*l.* was further reduced by 168*l.*, bringing down the judicial rents to 480*l.* Thus, after an average reduction of 18 per cent. had been made by the agreements, a further reduction of 20 per cent. was ordered by the Court. A similar Paper handed in by Mr. Lawrence Doyle, another of the Legal Assistant Commissioners, and printed

in the same Appendix, shows a similar result. It was only owing to the omission to file these agreements, that the Court was able to intervene.

The decisions of Sub-Commissions in fair rent cases are subject to re-hearing by the Land Commission upon the application of either of the parties; and in like manner an appeal may be taken to the Land Commission from a fair rent decision of a County Court. The rents fixed by the Sub-Commissions to the 31st of March last were 153,049; the applications for re-hearing numbered 38,524, of which 17,784 were withdrawn, and 19,655 have been heard by the Land Commission. As already noted, the decisions of the County Courts were 15,537; the appeals, 4,097; the appeals withdrawn, 1,515; and the appeals heard, 2,192.

Re-hearings and Appeals.

Thus it will be seen that 168,586 cases were decided by the subordinate courts; the appeals and applications for rehearings were 42,621; and of these 19,299, or nearly one-half, were withdrawn, and 21,847 went to judgment.

The rents fixed by the Sub-Commissions in the 19,655 cases subjected to re-hearing amounted to 431,398*l.*; the net result of the re-hearings was to increase this amount by 1,282*l.*, or only 0·2 per cent. In the 2,192 cases brought up from the County Courts, the rents fixed by those Courts amounted to 35,473*l.*; this amount was increased on appeal by 1,101*l.*, or 3·1 per cent. The gross amount of rental dealt with by re-hearing or appeal was not affected, it will be observed, to any material extent. In a number of cases, relatively minute, substantial increases or reductions were made, but the general result has been to confirm the rent as fixed by the Court below, to add a small percentage to that rent, or to subtract a small percentage from it.

Net Result.

The system of re-hearing on all questions of value is one of the causes which, in our opinion, deter tenants from making application to have fair rents fixed. It entails grievous delays, it protracts uncertainty; it imposes heavy costs, oppressive to a humble class of suitors; it necessitates expenditure out of all proportion to the practical result. The 21,847 re-hearings and appeals, the effect of which was to add but 2,383*l.* to 466,871*l.* of rental, as fixed by the Courts below, must have cost the parties at least 250,000*l.*, and this vast expenditure was incurred, in the case of nine-tenths of the cases (those from the Sub-Commissions), in order to subject the decision of a Court, two of the three members of which are agricultural experts, who themselves inspect the holding, to be reviewed by another Court, no member of which inspects the holding, and no member of which need be an agricultural expert, although the question to be determined is one of the value of land.

Re-hearing on Value. 1840, 3635, 4176, 4582, 4893, 8629, 4187, 4353; Cherry 585.

10113.

Your Committee would recommend that, in any case in which the parties so desire, a holding should be inspected by one or two valuers, in advance of the hearing of the case by the Sub-Commission. If this valuation be accepted by the parties, it should be fixed as the fair rent for the statutory term. If either party declines to accept the valuation, the case would then be heard by the Sub-Commission in the ordinary course, and in this event such hearing would serve as an appeal. But your Committee are of opinion, upon the facts before them, that where the valuation of a holding does not exceed 20*l.*, and where the Judgment of the Sub-Commission on questions of value is unanimous, there should be no rehearing by the Land Commission on any question of value.

Recommendation as to re-hearing.

Fair Rents: How Fixed.

The gross amount of rental dealt with under all the fair-rent provisions of the several Acts since the passing of the Act of 1881, is 6,140,602*l.*; and the Land Commission report that this total has been reduced under these provisions by 1,279,475*l.*, or 20·8 per cent.

Reductions under Acts.

It is believed that agricultural rents in England, where the tenant generally makes no improvements, and possesses no legal property in the holding, have undergone much heavier reductions within the same period, by voluntary action of the landlords.

Voluntary reductions in England.

The Act of 1881, in directing that the Court, on the application of the tenant of a holding, or of the landlord, or both, might determine "the fair rent to be paid by "such tenant to the landlord for the holding," laid down no principle, or rule, or method of valuation, to guide the Court in fixing the amount of the rent. The only instructions bearing upon this fundamental matter in any definite sense, are set forth in Section 8 of the Act, and they direct the Court, (1) to "have regard to the interest of the "landlord

Fair rent undefined.

"landlord and tenant respectively," and, (2) that "no rent is to be allowed or made "payable" in respect of improvements made by the tenant, and for which he had not been paid or otherwise compensated by the landlord. Section 8. Sub-section 8, Sub-section 9.

No subsequent Statute has touched the subject of the principle of a fair rent. No mode of valuation has been prescribed either by Parliament or otherwise, and it appears that the interest of the tenant, to which the Court is to have regard in fixing the amount of the rent, has never been made the subject of a direct judicial pronouncement, either by the Court of Appeal or by the Land Commission, or even by any County or Sub-Commission Court. Consequently, of necessity, each individual administrator acts absolutely according to his own opinion of what may have been intended, and there is neither a common understanding of the law, nor anything approaching to uniformity in practice. No fixed principle or settled mode of valuation. 10220.

Whilst "the interest of the tenant" still continues undefined, the direction that "no rent is to be allowed or made payable in respect of the tenant's improvements," was subjected to judicial interpretation soon after the passing of the Act. The Land Commission interpreted the direction to mean, that all letting value resulting from the tenant's improvements was to be excluded from consideration in fixing the fair rent, but the Court of Appeal (in Adams *v.* Dunseath, referred to more particularly in another part of this Report) held, by a majority of the judges, that the direction of the Act not to allow any rent in respect of the tenant's improvements, must be taken to mean, not what the language of the Act conveys to the ordinary mind, but something different and much more complex—namely, that the tenant is entitled to an annual percentage of indefinite amount on his outlay in making the improvement; but that any remainder of letting value due to his improvement, after the percentage on outlay has been allowed to him, is to be divided between him and the landlord, according to the judicial discretion of the Land Commission, having regard to the interest of the landlord and the tenant respectively. Interest of the tenant not defined. FitzGibbon, L.J., 3315-427. 10423-774. 782-89. 785-828. 4036. 10206. Adams *v.* Dunseath.

This remarkable judgment, reversing the law as laid down by the Land Commission in the same case, and formulating a complicated rule of law on apportionment of the value of the tenant's improvements,—which, according to the apparent meaning of the words of the Act, was not to be apportioned,—at the same time presented two conclusions so clearly, as to render it difficult to realise that their meaning could be mistaken. The tenant was to have the allowance upon his outlay, but so far from being limited by the judgment to this allowance, he was declared entitled to a share of any remainder of letting value resulting from his outlay. And his right to the additional share was declared to be attributable to the legal interest of the tenant in the holding, apart from his improvements. Rulings in Adams *v.* Dunseath. *See* Appendix. 10209.

This judgment, delivered in 1882, has been the law since then, and is now the law, and during the interim of 12 years has been binding upon all administrators of the Land Acts. But your Committee have learned with extreme surprise, from a majority of the official witnesses, including the three legal Assistant Commissioners who were examined, Mr. Bailey, B.L., Mr. Doyle, B.L., and Mr. Greer, also two lay Assistant Commissioners, as well as the County Court Judge of Kerry, and Mr. Heard, a County Court valuer, that the practice is to give to the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements in the soil. As to the interest of the tenant, which, according to the Court of Appeal, entitles him to a further share in the value of his improvements beyond the mere interest on his outlay, the evidence of these witnesses is plainly to the effect, that what they understand by the interest of the tenant is simply a right to the percentage on his outlay upon improvements. This conclusion is confirmed by their testimony that they fix a fair rent to be paid by the present tenant, at what a solvent tenant desiring to become a tenant of the holding could fairly pay from year to year. That is to say, they fix the rent at what might be paid by a person having no interest in the holding, and take no account in measuring the fair rent of the present tenant's statutory interest. Not followed by Sub-Commissions. 1484. 2884. 7463. 8605. 6209-13. 7377. 9845. 8150. 12868. 10562. 5038. 5474. 1526. 1982.

The County Court Judge of Cork, examined at the close of the Inquiry, gave evidence on this question, which shows a practice on his part different from that which had been given by his own Court valuer, and by the County Court Judge of Kerry. Two or three lay Assistant Commissioners gave evidence that they allowed the tenant a share in the value of improvements in the soil beyond the interest on his outlay, and also that they allow for the occupation interest in fixing the amount of the fair rent. But these 11470. 9977. 9016. Contra lictions. (Qy.)

are questions of law as well as of value. The legal Assistant Commissioners, according to the evidence, lay down the law in their several courts. Your Committee examined three of the four legal Assistant Commissioners, and they agreed that the practice is to give the tenant, in respect of his improvements in the soil, a percentage on his outlay, and nothing more, and to fix the fair rent, without taking into account his occupation interest. Your Committee are quite unable to understand, and no witness has attempted to explain, how it was possible for some Assistant Commissioners to give only the percentage on outlay, and not to allow for the occupation interest in the rent; whilst others, in the same courts, gave a share beyond the percentage and allowed for the occupation interest; and how this contrariety of practice could continue for twelve years, without any dissent between the legal Assistant Commissioners valuing in such different modes, without any ruling of the law by the Assistant Commissioners, without any evidence or argument in the Courts or any of them, and without a solitary appeal on the subject out of over 40,000 appeals lodged with the Land Commission.

Conclusion.

Your Committee can come to no other conclusion than that the general practice of the Sub-Commission Courts has been, and is, to deny to the tenant that share in the value of his improvements, to which the Court of Appeal, in Adams *v.* Dunseath, declared him to be entitled, and to leave out of account, in fixing the fair rent, that interest of the tenant to which the Statute expressly directed the Courts to have regard, and the operative force of which the Court of Appeal explicitly affirmed.

Evidence of Mr. Justice Bewley.

The Judicial Commissioner, Mr. Justice Bewley, on being examined, towards the conclusion of the inquiry, when the contradictions in the evidence of the Assistant Commissioners had challenged explanation, informed your Committee that the Land Commission do not instruct the Assistant Commissioners, and do not consider that it is their function, or that they have any right, to instruct the Assistant Commissioners in the discharge of their duty. It is evident, however, in the state of facts disclosed, that effectual measures must be adopted without delay to secure both the observance of the law, and intelligent uniformity of practice. The learned Judge explained that the practice in his Court is to allow the tenant only the percentage on outlay in respect of his improvements; but that his occupation right is taken into account in fixing the fair rent, and that by this means the tenant receives his due share of the remainder of the value of his improvements, as part of his general interest in the holding.

10231, 10235.

10198. 10205. 10208.

Mr. Justice Bewley held that this is in accord with the judgment in Adams *v.* Dunseath, and he produced a correspondence between himself and Lord Justice FitzGibbon, in which the Lord Justice appeared to convey a general assent to Mr. Justice Bewley's proposition. Your Committee have learned that the Court valuers of the Land Commission are not instructed to act in the particular mode described by Mr. Justice Bewley. His colleague, Mr. Commissioner FitzGerald, Q.C., examined at the opening of the sittings of your Committee, gave an account of the method of fixing fair rents, but made no reference to the occupation right. Assuming that the Land Commission Court takes this right into account in reduction of the rent, and that the Sub-Commission Courts, as testified by their legal chairmen, fixed the rents without deduction in respect of the occupation right, your Committee confess their inability to understand how the rents brought up on appeal from the Sub-Commission Courts, amounting to 431,398*l.*, should not have been reduced, but were increased to 432,680*l.* by the Court of the Land Commission. The intervention of Parliament is urgently required to define and protect "the interest of the tenant," and to secure coherent administration of the law.

Legislation required.

Further particulars in fair rent cases.

Your Committee have further to observe that the elaborate forms of report in use by Sub-Commissions and appeal valuers, and the less complicated forms used by the valuers to the County Courts, whilst they furnish many particulars of more or less interest to the parties, do not afford sufficient information directly bearing on the essential matter,—that is, the fairness of the rent.

Recommendation.

In order to secure that such information may be given, your Committee recommend that in future all valuations be so made and recorded, as to show the estimated value of the gross produce of the holding; also the fair rent to a solvent person desiring to become a tenant—the holding, including buildings, being valued as it stands, as a going concern. The valuation should also show any deductions from such rent in respect of the occupancy right and the improvements of the present tenant, distinguishing between deductions of the letting value of tenant's buildings, and of other improvements not affecting the capacity of the soil. It should further set out the allowances for drainage and

and reclamation respectively, in the latter cases, showing the interest allowed on outlay, and the apportionment of any remainder of the letting value due to the improvement.

Improvements.

Difficult issues presented.

In Ireland farm buildings and other improvements, which would in England be regarded as a necessary portion of the equipment of a farm, are almost invariably the work of the tenant, and hence the fixing of a "fair rent" depends largely on the value and legal ownership of these improvements. The additional value to the holding arising from improvements, the legal interest of landlord and tenant therein, and the apportionment thereof between both, which the existing state of the law requires, present issues of much difficulty.

1213, 8956, 5501, 4531, 3669, 12283.

Section 8, Sub-section 9.

Section 8, Sub-section 9, of the Act of 1881 provides:

> "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title."

Importation of Act of 1870.

The administration of this important provision is seriously affected by the fact that it was held in the case of Adams *v.* Dunseath that these "improvements" are only such as a tenant could, under the Act of 1870, claim compensation for on "quitting his holding," and that the "enjoyment" of improvements made before 1870 is to be taken into account in the landlord's favour. Where the Ulster custom prevails, this doctrine does not apply.

Different points of view.

The point of view from which improvements are regarded in the two Acts is entirely different. The Act of 1870 prescribes the measure of compensation to be paid by the landlord to the tenant on quitting his holding, whether by eviction or otherwise; that of 1881 is concerned with the fair rent to be paid by the tenant to the landlord during occupation.

Application of the provision s of 1870.

The majority of the judges, however, in Adams *v.* Dunseath held that the enactment in Section 8, Sub-section 9, of the Act of 1881, already cited, relates only to such improvements as the tenant could claim compensation for under the Act of 1870; and that as the "enjoyment" of such improvements must, by Section 4 of the latter Act, be taken into account against a tenant on "quitting his holding," in reducing an award of compensation, such "enjoyment" should also reduce the allowance made in the fair rent of the sitting tenant for his improvements. Moreover, the Court held that as the Act of 1870 debarred the out-going tenant from claiming compensation for a number of improvements in specified cases, so these excluded improvements were to be credited to the landlord in fixing the fair rent. Again, as improvements of a kind not "suitable to the holding" are not to be paid for by the landlord, under the Act of 1870, so a superior house on a small farm may have rent imposed on it under the Act of 1881.

Tenants over 50*l.*, and leaseholders.

Furthermore, tenants of over 50*l.* valuation (since 1881, 150*l.*) could contract themselves out of any right to compensation under the Act of 1870. Under the Act of 1881 a leaseholder is not exempted from rent on improvements, if his lease contains a covenant that he is not to claim for them on quitting his holding. Such was the decision in the leading case affecting leaseholder's improvements, of O'Neill *v* Cooper (unreported). There the lease contained a covenant that the tenant was not to claim compensation for improvements at its expiration. Subsequently the Land Act of 1881 gave tenants at the end of their leases practical perpetuities, and the Act of 1887 conferred upon lessees the right of applying to fix a fair rent. But because of the "contracting-out" covenant, not to claim compensation for improvements when the lease came to an end, the landlord was held entitled to rent on them while the tenancy continued in existence. The file in this case produced before your Committee shows that improvements to the amount of 1,613*l.* had been effected by the tenant and his predecessors in title, but in consequence of the decision in Adams *v.* Dunseath no allowance was made therefor, and the landlord got credit for them in the rent to the extent of 25*l.* a-year. This case ruled all others where a lease contained similar provisions.

For case stated, *see* Appendix.

Classes of improvements liable to rent.

The following is a summary of the more important classes of improvements in respect of which a tenant cannot claim compensation under the Act of 1870, and on which,

which, therefore, owing to the decision in Adams *v.* Dunseath, he may now be rented when a fair rent is being fixed:—

(i.) Not suitable.

(i.) Works not "suitable to the holding" (Act of 1870, section 70). Thus, if a tenant builds a dwelling-house of a character superior to the necessities of the farm; or if, having several holdings, he erects on one of them farm-buildings for the whole, and which are therefore in excess of the requirements of the particular holding—in these and analogous cases the improvements are "not suitable to the holding," and the tenant may be rented on the buildings he has himself erected.

(ii.) Excluded by contract.

(ii.) Improvements in respect of which a tenant, whose aggregate poor law valuation is 50*l.* or upwards, has contracted in writing not to claim compensation on quitting his holding. The Act of 1870 permitted such tenants to contract out of the Act (s. 12), and, as we have seen in leases made after the Act of 1870, such contracts were frequently inserted. Yet, although the contract was only made with a view to the provisions of the Act of 1870, the landlord is nevertheless entitled to rent on such improvements under the Act of 1881.

(iii.) Made for valuable consideration.

(iii.) Improvements made in pursuance of a contract entered into for valuable consideration therefor (Act of 1870, c. 46, Sec. 4, Sub-sec. c.). This exemption was presumably intended to protect the landlord who had actually paid the tenant for making the improvements; but the words "valuable consideration" legally cover a number of cases where in reason and equity the tenant is entitled to the benefit of his improvements. Thus, where a lease is made at a rack-rent, and a clause is inserted binding the tenant to erect buildings or execute some other improvements at his own expense, the mere granting of the lease, no matter how high the rent may be, is in law a "valuable consideration" for the tenant's contract. He is therefore disentitled to claim compensation on quitting his holding for any improvement so executed, and the landlord, when a fair rent is fixed, is entitled to rent on such improvement, exactly as if the tenant found it there when he became tenant.

Acceptance of a lease.

The question whether by reason of the acceptance of a lease the improvements made by the tenant or his predecessors in title, pass to the landlord, is not in a satisfactory position. Though the majority of the Court of Appeal held in Adams *v.* Dunseath, that the landlord was entitled to rent on the house erected by the tenant's predecessor prior to the lease, the Land Commission in Walsh *v.* Limerick (23 I. L. T. R. 17) held under similar circumstances that the buildings remained the tenant's. Both decisions, however, were arrived at on the special facts of the case, but Mr. Justice Bewley appeared inclined to think that the Land Commission might still be governed on this point by the view taken in Adams *v.* Dunseath. In the opinion of your Committee, the law should be put beyond doubt, that the acceptance of a lease does not vest the tenant's improvements in the landlord.

11264–8.

(iv.) Excluded by Time Limit.

(iv.) Improvements made before the passing of the Act of 1870, and twenty years before the claim for compensation (or fair rent application) is made (Act of 1870, Section 4, Sub-section 1*a*), *except* permanent buildings and reclamation of waste land. The most important improvement so excluded is drainage executed on land not absolutely "waste." Land, no matter how bad, which has previously been cultivated, or which is even fit for coarse grazing, however inferior, is not technically "waste." The drainage of such land must naturally be more common than the drainage of land absolutely "waste," and requires a costly class of improvement. Fences, farm roads, tree planting, are thus also excluded.

(v.) Exclusions under certain leases.

Act of 1870, Sec. 4, Sub-section 3.

(v.) Improvements made during the continuance of a lease for a term of 31 years or upwards, *except* permanent buildings and reclamation of waste lands and unexhausted tillages and manures, unless it expressly provided in the lease that the lessee is entitled to compensation. The remark just made as regards drainage, fences, farm roads, tree planting, also applies here.

(vi.) Under fee farm grants and perpetual leases.

802–7.
8074–84.
1666.
4035.
10318.

Ratty *v.* Kelly; Mollan and Keiran.

(vi.) Improvements made by a tenant holding under a fee-farm grant or lease for ever. This only applies where a tenant is having a fair rent fixed under the provisions of the Redemption of Rent (Ireland) Act, 1891. The definition of "tenant" under the Act of 1870 (Section 70) does not include a tenant under a fee-farm grant, and such a grantee can therefore make no claim for compensation under that Act. Accordingly, where such a grantee is now entitled to fix a fair rent, the landlord is entitled to claim rent on the whole value of all his improvements.

The

The branch of the decision in Adams *v.* Dunseath, dealing with the word "improvement," is also highly important. The definition of this word was contained in the Act of 1870, and was declared to extend to the Act of 1881. The more material part of this definition declares "improvement" to be "any work which, being executed adds "to the letting value of the holding." In consequence of the use of the word "work," the Court of Appeal drew a distinction between the increased letting value arising from the improvement, and the improvement or improvement work itself, and the practice of the Sub-Commission Courts has been to give the tenant no share in the increased letting value which his improvement created, beyond interest on the actual cost of the improvement work.

Definition of "Improvements."

Effect on Rent.

The Act of 1870 also provides (Section 4):—

> "Where a tenant has made any improvements before the passing of this Act "on a holding held by him under a tenancy existing at the time of the passing "thereof, the Court, in awarding compensation to such tenant in respect of "such improvements shall, in reduction of the claim of the tenant, take into "consideration the time during which such tenant may have enjoyed the "advantages of such improvement; also the rent at which such holding has been "held, and any benefits which such tenant may have received from his landlord in "consideration, expressly or impliedly, of the improvements so made."

Act of 1870, Section 4.

The Court of Appeal, in Adams *v.* Dunseath, held that this limitation also applied where the fair rent of a holding was being fixed under the Act of 1881, and that the right of a tenant to be exempted from rent on his own improvements was consequently qualified accordingly.

Applied to Exemption from Rent.

Mr. Justice Bewley, however, stated that in the practice of the Court of the Land Commission, while the tenant did not receive specifically any share in the increased letting value, beyond interest on the actual cost of the improvement work, he received a further share by virtue of his occupation-right. The question of occupation-right is treated elsewhere in this Report. From the evidence of Lord Justice FitzGibbon, what the Court of Appeal apparently decided in Adams *v.* Dunseath was that the residue of the increased letting value due to such improvements, after deducting interest on cost, did not necessarily in all cases go to the landlord, but was to be allocated as between landlord and tenant, according to their several interests in the holding, having regard to all the facts of the case.

Bewley, J., on Occupation Right. 10209.
FitzGibbon, L.J. 3353–68.

On the two cardinal issues affecting improvements—the apportionment of increased letting value consequent thereon, and the application of the exclusions and limitations of the Act of 1870 to the fixing of fair rents—decided by the majority of the judges in Adams *v.* Dunseath, Parliament strove, only six months previously, to prevent the possibility of such a construction being given to Sub-section 9, Section 8, as the Court of Appeal declared to be the law.

For cases stated *see* Appendix.

Intention of Parliament.

In the first draft of the Land Bill of 1881, as introduced into the House of Commons, the following limitation on the measure of the tenant's interest, was contained in the fair rent section.

Proceedings in Parliament.

> "The Court, in fixing such rent, shall have regard to the tenant's interest in the holding, and the tenant's interest shall be estimated with reference to the following considerations, that is to say :—
>
> "(*a.*) In the case of any holding subject to the Ulster Tenant Right Custom, or to any usage corresponding therewith, with reference to the said custom or usage.
>
> "(*b.*) In cases where there is no evidence of any such custom or usage, with reference to the scale of compensation for disturbance . . . . and to the right (if any) to compensation for improvements effected by the tenant or his predecessors in title."

First Draft.

This provision the House rejected, and subsequently inserted in the fair rent section, Sub-section 9, which, as it passed the House of Commons, simply ran: "No rent shall be made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title." This Sub-section was struck out by the House of Lords.

Sub-section 9 of Section 8.

In the House of Lords.

Lords Bill, No. 167, 1881.

Hansard, Vol. 264, pages 1475–7. Limitation proposed.

Upon the Bill being returned to the Commons the Sub-section was reinserted, but the Irish Attorney General, Mr. Law, proposed the following limitation :

> "And for which the tenant would be entitled to compensation under the provisions of 'The Landlord and Tenant (Ireland) Act, 1870, as amended by this Act.'"

Limitation rejected.

This exactly corresponded to what, in Adams *v.* Dunseath, was afterwards declared to be the law, but the House refused to accept the words, which were rejected by a majority of 134.

Words added.

The Irish Attorney General then proposed the addition of the following words :—

> "And for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or compensated by the landlord or his predecessors in title."

Hansard, Vol. 264, p. 1480.

This addition was unanimously agreed to.

Thereupon Sir Stafford Northcote, the Leader of the Opposition, proposed the addition of the words as to "enjoyment" from Section 4 of the Act of 1870 :

Sir S. Northcote, 10th August 1881.

> "The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of those improvements, and also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made."

These words, which the Court of Appeal in Adams *v.* Dunseath declared must be read into Sub-section 9, Section 8, the House of Commons rejected by a majority of 130.

The Prime Minister, in refusing to accept them, used the following language :—

Mr. Gladstone. Hansard, Vol. 264, p. 1489.

> "The doctrine accepted at the time of the Land Act of 1870, and which he certainly declined to accept the night before, was the doctrine that the enjoyment by the tenant for a certain time of his own improvements, might have reimbursed him for the cost of those improvements, and by a natural process they passed over to the landlord. But that was not the basis upon which they proceeded now, and there was no occasion for it. The tenant's improvements were the tenant's own property, and he would not admit the principle that the time during which he had enjoyed those improvements was any reason for their passing away from him."

Mr. Gladstone, 9th August 1881. Hansard, Vol. 264, p. 1393.

On the previous day Mr. Gladstone had made this declaration : "In the Act of 1870 we did, in respect to the tenant, recognise the principle that he might be compensated by a reasonable lapse of time in respect of improvements he had made, and that the use and profit of those improvements for a certain time might be considered as compensation, but we do not recognise that principle in the present Act. None of the enactments of the present Bill are founded on that principle. . . . It is much better, I think, that those who make improvements should have the whole benefit of the improvements."

Fresh limitation by the Lords.

When the Bill was again sent back to the Upper House, the Lords inserted the words as to enjoyment proposed by Sir Stafford Northcote, which had been rejected by the Commons, and the clause, therefore, on its return from the House of Lords, had the following limitation attached to it :—

> "The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made."

Hansard, Vol. 264, p 1969.

Rejected by the Commons.

The House of Commons again rejected these words, this time by a majority of 128.

Sub-section 9. Section 8.

The word "otherwise" was then inserted before "compensated," and the Lords subsequently agreed to the Clause in the shape in which it now stands.

Final Shape.

> "No rent shall be allowed or made payable in any proceedings under this Act "in respect of improvements made by the tenant or his predecessors in title, "and for which, in the opinion of the Court, the tenant, or his predecessors in "title, shall not have been paid or otherwise compensated by the landlord or his "predecessors in title."

It cannot, therefore, be matter for surprise, that the Irish tenantry should seek to secure that property in their improvements, which Parliament unquestionably intended to declare to be their right.

Even

Even if the records of the two Houses did not so unmistakeably show the intentions of the Legislature, it is plain that it cannot equitably be argued, that because certain improvements do not fulfil the technical legal conditions, to entitle a tenant on quitting his holding to be compensated for them under the Act of 1870, the landlord is entitled to charge rent on them to the sitting tenant, under the Act of 1881, as if the landlord had made them, or had paid for them out of his own pocket. Yet the law has been administered on this principle for 13 years, and about 300,000 rents have been fixed, subsequent to the decision in Adams *v.* Dunseath, which was delivered on 28th February 1882, six months after the passing of the Act. Equitable consideration.

The evidence taken by your Committee confirms the view expressed in the House of Lords on the Second Reading of the Land Act of 1887, on the question of improvement, by Earl Cowper, at the conclusion of the inquiry by the Royal Commission, of which he was President. Earl Cowper's view.

> "With one or two exceptions, he distinctly stated that until very recently landlords did not make improvements on the land, and when the tenants made them, the rents were immediately raised. He attributed the present condition of Ireland to the fact that the landlord-class in Ireland, who in other respects were a most admirable race of men, had in many instances been undoubtedly bad landlords. The future hope of the country lay in protecting the tenants in the possession of their improvements." Hansard, 22nd April 1887.

When subsequently challenged in the House of Lords on this expression of opinion, Lord Cowper said :—

> "He did not believe that improvements as a rule were made by the landlords; that they were, in fact, usually made by the tenants, and the only plan was to encourage tenants to make improvements and to protect such improvements when made. He qualified his remarks by saying 'until recently' one could count on one's fingers the Irish estates on which improvements were made by the landlords. . . He thought he was justified in saying that, as a rule, improvements had been made in Ireland by the tenant, and in many cases the rent had been raised upon such improvements." Lord Cowper, 2nd May 1887.

Your Committee have carefully considered the direction of the Act of 1881, that no rent should be allowed in respect of the tenant's improvements; also the decision in Adams *v.* Dunseath, rendering the tenant liable to rent in respect of a portion of the value resulting from his improvements; and finally the practice of the Sub-Commission Courts, which, according to the weight of evidence before us, allows the landlord rent in respect of the whole of the improved value, except so much as is given to the tenant for interest on his outlay. The intention of the Legislature has not, in the opinion of your Committee, been carried into effect by the Judgment in Adams *v.* Dunseath, and it seems to have been defeated in the practice of the Courts in fixing rents. General conclusion.

It is of great and urgent importance that the law on this subject should be made unquestionably clear. Agricultural improvements are of vital consequence to the welfare of Ireland, and it is certain, from experience, as well as from the effects of the Act of 1881 upon the interests of landlord and tenant, that the tenant alone is willing to make improvements, or will in future make them. The public interest, therefore, demands that he should be encouraged by being secured in the enjoyment of the value resulting from his expenditure and labour. In making improvements, he incurs a certain risk of loss. It often happens that the cost is not nearly repaid by the result. The usual case appears to be that the increased value is only sufficient to yield a bare return for the outlay. When, by exceptional success, a more considerable value results, which never would be created except by the tenant's exertions, he is liable to be charged an increased rent in consequence, and this is not encouraging, but the reverse. The effect of the creation of a statutory term being to let the land, including its capacity, to the tenant in perpetuity, there appears to be no reasonable and no intelligible cause for denying to the tenant the full enjoyment of any improvement in his holding, produced by the expenditure of his capital or the application of his labour. The interference of Parliament is required in order to ascertain, and secure to the tenant, his right to the improved letting-value which has been elicited by his improvements. Importance of protecting improvements.

After a careful review of the whole evidence, your Committee recommend that improvements of whatever character, made by the tenant, should be exempted from rent; and that the definitions and limitations imported from the Act of 1870 should not apply in the administration of the fair-rent provisions of the Act of 1881. Interference of Parliament required.

Procedure in respect of improvements.

On the question of procedure of the Land Commission in considering improvements, your Committee desire to express their entire concurrence in the recommendation made by the Select Committee of the House of Lords in 1882, presided over by Earl Cairns, as to the practice of the Land Commission in valuing improvements, viz. (par. 6) :—

Recommendation of Select Committee in 1882.

"The Committee are of opinion that it is very important in the interest of the tenant, as well as the landlord, that the Sub-Commissioners, in fixing a judicial rent, should determine and record both the fair rent of the holding absolutely and also the sum which they find should be deducted from this rent in respect of the tenant's improvements. The knowledge of the rent assigned to the holding irrespective of improvements is necessary with a view to the settlement out of Court of disputes as to adjacent or similar holdings, and may be of much importance in questions as to the rental of the whole country, and the separate findings as to rental and improvements will greatly simplify appeals, inasmuch as both landlord and tenant may frequently be satisfied with the finding as to rental, and desire to appeal as to improvements only, or *vice versâ*.

"The Committee find that for some time after the formation of the Sub-Commissions the books issued to them for entering minutes of their orders contained two columns, headed 'Estimated value of Tenants' Improvements,' and 'Annual Sum deducted in respect of Tenants' Improvements from present 'Rent in fixing Judicial Rent." These columns were not, however, filled up by the Sub-Commissioners, and have been latterly omitted from the order minute books. The Committee do not think that any sufficient cause has been shown why this information should not be required, at least as to holdings not subject to the Ulster Customs, and they understand the Commissioners (although opposed to the information appearing) to be of opinion that the information should be given, and that it would be valuable."

Further Report.

This Report is dated the 18th April 1882, and their Lordships in a further Report, dated the 9th July 1883, having heard further evidence, reiterate their opinion, as follows :—

"Complaint is also made that there is no sufficient record showing what improvements have been proved to have been made by the tenant and have been allowed for as affecting the rent. . . . The Committee regret to find . . . that the form adopted by the Commissioners in order to meet this complaint has proved useless, and they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made and preserved a distinct specification of the improvements established by the evidence of the value assigned to them in the settlement of rent."

Objection by O'Hagan, J.

In his evidence before the Lords' Committee, on the 25th April 1882, Mr. Justice O'Hagan objected to this information being given, as appears from Questions 3713 to 3715, stating in reply to Lord Cairns that it would create more discontent than it would allay, and in reply to the Marquis of Salisbury that there were reasons of policy against it. Nevertheless, the recommendation referred to was made, and Mr. Justice Bewley, who has succeeded Mr. Justice O'Hagan as Judicial Commissioner, informed your Committee that if they reported to a like effect, the Land Commission would now undertake to carry out the recommendation.

Not shared by Bewley, J. Q. 11345.

Presumption as to improvements.

On the question of presumption as to the making of improvements, the 5th Section of the Act of 1870 enacts that they shall be deemed to have been effected by the tenant. But the exceptions are so numerous, that the provision is of little value, and your Committee recommend that the exceptions be repealed, and that until the contrary is proved, all improvements be deemed to have been made by the tenant or his predecessors in title.

Disadvantage of the tenant.

858, *seq.* 1208. 1211. 1224. 1463. 1543. 1548. 5181. 7420, *seq.* 8906.

At present, except in the small number of cases in which the limited presumption created by the Act of 1870 operates, the tenant is always liable to be placed at a disadvantage, by having to prove the making of his improvements by the evidence of some one actually present when they were effected—a condition in many cases impossible, or at least very difficult, for him to satisfy, especially in cases where the improvements are of old date, or where the holding has come into his possession by purchase. Owing to such difficulties of proof, valuable improvements are often lost to tenants, and rent imposed

posed on them as if they were the landlord's property. Section 8, Sub-section 4, of the Act, 1881, enables the Court to disallow a fair rent application, if satisfied that the permanent improvements have been made and substantially maintained by the landlord, and this provision amply safeguards an improving owner. But it is abundantly clear that it is the practice in Ireland for the tenant to make the improvements, and, therefore, the presumption of law should lie accordingly.

Holdings in Ulster.

Similarly, holdings in Ulster should be deemed subject to the Ulster custom until the contrary is established.

Registration of Improvements.

In the limited number of cases in which improvements are executed by the landlord, the record of the fact in the estate books would prevent any difficulty of proof arising. In the Act of 1870 provision was made to enable a tenant to register his improvements in the County Court, but the procedure was cumbrous and expensive, and especially since the passing of the Act of 1881 has not been resorted to. Your Committee recommend that when, on the hearing of a fair-rent application, it has been determined that improvements belong to a tenant, the record of this fact by the Court should be made evidence in subsequent proceedings, in the same manner as if the procedure under the Act of 1870 had been adopted.

Recommendation.

Landlord to state grounds of objection.

While, according to the existing rules of the Land Commission, the tenant of any holding, the valuation of which is over 10*l.*, must make out a schedule of the improvements for which he intends to claim credit on the hearing of a fair-rent application, the landlord is under no corresponding obligation to give notice of any point of law which he intends to raise at such hearing. Your Committee see no reason why the landlord should not be obliged, within a certain time after the service of the originating notice to fix a fair-rent, to state all the grounds of his objection to such application, and they recommend that a rule to that effect be made by the Land Commission, and that a similar rule should apply to hearings in the Appeal Court.

True Value, Specified Value, and Free Sale.

True value. Section 1. 2752.

By the Land Act of 1881 it is enacted that the tenant for the time being of every holding, not specially excepted from the provisions of the Act, "may sell his tenancy for "the best price that can be got for the same," subject to regulations set forth in the section.

Sub-section 2. Sub-section 3.

One of these regulations requires the tenant to "give the prescribed notice to "his landlord of his intention to sell his tenancy;" and another directs that "on "receiving such notice the landlord may purchase the tenancy for such sum as may "be agreed upon," or in the event of disagreement, may "be ascertained by the Court "to be the true value thereof."

Specified value. Section 8. Sub-section 5.

It is also provided that on the occasion of any application to the Court to fix a judicial rent, the landlord and tenant may agree to fix, or in case of dispute the Court may fix, "a specified value for the tenancy;" and where such value has been fixed, then if the tenant during the statutory term gives notice of his intention to sell the tenancy, the landlord is entitled to purchase it for the amount so fixed, subject to addition of the value of improvements afterwards made by the tenant, and subject to deduction in respect of subsequent dilapidation of buildings and deterioration of soil. Holdings subject to the Ulster custom, or to any usage corresponding to the Ulster custom, are exempted from the provision as to "specified value," and with regard to "true value," the tenants of such holdings are allowed by law the option of selling their tenancies, either under the custom or usage, or under Section 1 of the Act. In case of sale under Section 1, the landlord would be entitled to buy the tenancy at the "true value" agreed upon, or, in the event of disagreement, ascertained by the Court. But it appears that the Ulster custom tenant does not avail himself of this option, preferring to sell his tenancy in pursuance of the custom, and thus to avoid the exercise of a right of pre-emption by the landlord. It follows that, except in the case of a holding subject to the Ulster custom, the landlord may apply to the Court, when a fair rent is being fixed, to fix also a specified value at which he may purchase the tenancy whenever the tenant wishes to sell it; and whether or not the holding is one in respect of which a fair rent can be fixed, the landlord, on receiving notice from the tenant of his intention to sell the tenancy, may buy it, if no "specified value" has previously been fixed, "at what may be ascertained by the Court to be the true value thereof."

Specified value excluded by Ulster custom.

Section 1. Sub section 12.

Custom tenant may sell under custom.

Effect of provisions as to true and specified value.

Agreements not made.

The Act provides, as has been pointed out, that either the specified value, or the true value, of a tenancy may be fixed by agreement between the tenant and the landlord. It has not been shown, however, in the course of this Inquiry that any such agreement is ever made, neither does the question ever arise at the instance of the tenant.

No principle recognised.

2097, 2098.

Difficulty in fixing value.

Refusal to fix specified value.

True value fixed.

2742. 6107. 7161. 7591. 7834. 10287. 10941. 5587. 6073–4.

According to Mr. Doyle, a legal Assistant Commissioner, who has filled that office almost from the passing of the Act of 1881, the value of a tenancy is settled by "rule of thumb," and no principle is recognised. Indeed, Mr. Doyle declares that he does not know of any principle upon which any value can be put upon a tenancy other than the value of improvements belonging to the tenant. Other Assistant Commissioners examined before us have not gone quite so far as Mr. Doyle. But they agree in regarding as their most difficult function the fixing of the value of a tenancy. Apparently they discharge the duty, as a rule, with great reluctance. They even refuse to fix the "specified value," justifying their refusal on the ground that no adequate evidence was submitted. But under the statute it appears that they cannot refuse to fix the "true value" when the tenant is about to quit the holding, although we should suppose that the evidence in a case of application to fix "true value," there being no other question before the Court, would be probably more meagre, and, therefore, more unsatisfactory, than the evidence available in a case of "specified value," where, as the fixing of a fair rent is a portion of the case, there is testimony forthcoming at least as to the value of the holding. Whatever may be the evidence taken, the result appears to be that when the value is fixed, it is fixed without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got for the same. Whether, by the fixing of "specified value," the landlord is enabled to buy the tenancy at a future time, or by the ascertainment of "true value" he is empowered to purchase it at once, in either case the price to be paid is substantially less than the real market value of what the tenant has to sell. When the landlord acquires the tenancy at the price so fixed, there is nothing to prevent him, in the case of a present tenancy, from immediately re-selling at the full market value, subject to the fair rent payable by the former tenant, and even in the case where a present tenancy existed in the holding, the landlord, as the law now stands, will have it in his power, after the 22nd of August 1896, that is, after the lapse of fifteen years from the passing of the Act of 1881, to re-sell the tenancy at the full market value, and likewise to fix the amount of the future rent.

Value fixed lower than market price.

Landlord may re-sell at market value.

Section 20. Sub-section 3.

Illustrations of "true value."

App. 8.

App. 16.

From a Paper handed in by Mr. Justice Bewley, showing seven cases in which the "true value" fixed by Assistant Commissioners or County Courts was substantially increased on appeal, it appears that the average "true value" fixed by the subordinate courts was less than five years' purchase of the rent, and that it was increased on appeal by the Land Commission to 6½ years' purchase. A further Paper, also handed in by Mr. Justice Bewley, gives a return of all cases from the passing of the Act of 1881 to the 31st March last, in which the Sub-Commission or County Court made an Order on an application to fix the true value of a tenancy, and the Land Commission re-heard the application on appeal. Omitting the cases in which the decisions of the Court of first instance and of the Land Commission afford no basis for comparison as to value, we find that in 12 cases which arose in Ulster, the value fixed in the subordinate courts was, on the average, 10 years' purchase of the rent, and by the Land Commission, about 9 years' purchase; and in 12 cases out of Ulster, the lower courts awarded on the average 6½ years' purchase of the rent, which was reduced to an average of about six years' purchase on appeal to the Land Commission.

Sales of tenancies.

App. 12.

Effect of pre-emption on free sale.

Improvements checked by existence of right of pre-emption.

Another Paper, which has been handed in by Mr. Toler Garvey, land agent, shows the results as stated by land agents, in reply to a circular issued by the Irish Landlords' Convention, of the sales of over 3,000 tenancies throughout the country, from 1882 to the present time. This return discloses the significant fact that in Ulster, where free sale prevails to the general exclusion of the right of pre-emption, the average price of tenancies was 16·8 years' purchase of judicial and non-judicial rents combined, whilst in Leinster it was only 6·1 years' purchase, in Connaught 10·2 years' purchase, and in Munster 10 years' purchase. From these results we think it must be inferred that the market value of tenancies, where no right of pre-emption exists, is far higher than "true value" or "specified value," fixed by the Courts; and that where the right of pre-emption does exist throughout Leinster, Munster, and Connaught, the market value of the tenancy is thereby greatly depressed, because the person who buys a tenancy is liable to have "specified value" or "true value" afterwards fixed by the Court at the instance of the landlord. As improvements are stimulated in Ulster by the security of the right of free sale, so they must be checked in all other parts of Ireland by the right of pre-emption

pre-emption, for the tenant is not so likely to make improvements, when he may be compelled to sell them with his tenancy, for a price fixed arbitrarily by a Court, acting on no definite principle, as when he knows he can sell the tenancy, including the improvements, for the best price offered in the market.

Such consequences, repugnant to equity and opposed to good policy, do not in the opinion of your Committee accord with the object which Parliament had in view in enacting the free sale provisions of the Act of 1881.

Your Committee recommend that by the repeal of the provisions of the Act relating to "true value" and "specified value," the Courts be relieved of a function which they are unable to discharge, and that the declaration of the Act of 1881, that every tenant may sell his tenancy for the best price that can be got for the same, be thus rendered effectual. Repeal of pre-emption provisions recommended.

Exclusions.

Important evidence was taken on the number of the exclusions from the benefits of the Land Act; that is to say, of the large classes of holdings upon which a fair rent cannot be fixed. Some of these exclusions are due to direct statutory provision; others are deduced by judicial interpretation and decision. Exclusions.

A table was handed in by Mr. W. F. Bailey giving a list of these exclusions, and the reference to the section of the Statute, or to the legal decision, under which each class of cases is shut out from the benefit of the Act. Appendix, No. 3, Table I.

"Future" tenancies, which may be held either by those who in 1881 held "present" tenancies, which have since been broken after judgment in ejectment, or may represent lettings made since the Land Act of 1881 was passed, are excluded from the fair-rent provisions of that Act. "Future" tenancies.

When it is remembered that, since the passing of the Land Act of 1881, there have been over 33,000 evictions or notices terminating the tenancy, it will be seen how large is the number of "future" tenancies now called into existence. Their numbers.

Where the rent of the future tenant has not been increased since his tenancy began, he is a tenant-at-will, and consequently liable to eviction at the pleasure of the landlord. Where his rent has been increased, the acceptance of the increase by him has created a statutory term during the continuance of which he holds under the protection of the ordinary statutory conditions. But as soon as the term expires, at the end of 15 years, he falls back into the condition of a tenant-at-will, with no security whatever against eviction. He cannot apply to have a fair rent fixed, and he cannot acquire another statutory term unless the landlord imposes, and he accepts, another increase of rent. Position of future tenants.

The legal position of the future tenant demands consideration.

The exclusions in Section 58 of the Act, 1881, are taken (with the unimportant addition of glebe lands) from the Act of 1870, but several of the decisions on that Act have not been followed since 1881, with the result that many tenancies are now excluded, which, if the interpretation of the law had remained as it stood when the Act of 1881 was passed, would be entitled to the benefit of that measure. Indeed, the latest text writers on the Irish Land Acts, speaking of the decisions on the definitions in the Act of 1870, say, "Many are of little value, as they have been practically over-ruled by the decisions of "Courts of superior authority under the Act of 1881." Yet the definitions in the Act of 1870 agree substantially with those in the Act of 1881. Definitions. Cherry and Wakely, pages 169, 170

The definition of town parks in Section 15 of the Act of 1870, and Section 58 of the Act of 1881, excludes "any holding ordinarily termed town parks, adjoining or near "to any city or town, which bears an increased value as accommodation land over and "above the ordinary letting value of land occupied as a farm, and is ('shall be' in the "Act of 1870) in the occupation of a person living in such city or town, or the "suburbs thereof." So microscopic is the nicety of judicial interpretation, that on the difference between "*shall be* in the occupation of a person living in such city or town," in the Act of 1870, and "*is* in the occupation," in the Act of 1881, it was held under the former Act where the tenant ceased to reside in the town, that the land ceased to be a town park, whereas the contrary decision was arrived at under the Act of 1881. The Act of 1887 has now declared the law in accordance with the latter decision, and Town parks. 1006. 1012. 1560 *sqq.*, 2297. 2308. 3168. 10272. 10412. 11477. Judicial interpretation. Talbot *v.* Drapes, 5 I.L.T.R., 143. Nelson *v.* Headfort, 18 L. R. I. 407.

the condition as to residence is determined by the question whether the applicant or his predecessor in title resided in the city or town at the date of the passing of the Land Act of 1881.

Size of town.

It is on the question of the size of "city or town" that the fluctuation of decision has been most embarrassing. For instance, it was held under the Act of 1870 that Portglenone, with a population of 800, and Newmarket, with a population of 765, were not large enough to be "towns," and, therefore, could not have town parks. Following these decisions, the Land Commission in the earlier administration of the Act of 1881 held that Borrisokane and Kirkcubbin, with populations of 700 and 600 respectively, were too small to have town parks, but later on Hacketstown, a place of over 600 inhabitants, Newport, with a population of 683, Fivemiletown, with 500 inhabitants, and Timoleague, with 360, were held to have town parks, and in the present year Caledon, with a population of 700, has been held to be a town.

1013. 1014. 1009–11.

Recommendation of Cowper Commission.

The uncertainty of the law on town parks led the Cowper Commission to recommend that a town to exclude under Section 58, should have 5,000 inhabitants, where the holding was more than five acres in extent. In the Land Bill of 1887, introduced by the Government, 2,000 was inserted as the population-limit in the House of Commons, but the House of Lords rejected the proposal. The Act of 1887, however, attempted to apply a remedy in another way, by enacting that a holding shall not constitute a town park, "if it is let and used as an ordinary agricultural farm," provided its inclusion, under the operation of the Act of 1881, does not "substantially interfere "with the improvement of the city or town to which it belongs, or the accommodation "of the inhabitants thereof." A variety of decisions followed as to the meaning of this definition, and authorities have also accumulated as to the meaning of "suburbs," "accommodation land," "increased value," "ordinarily termed town parks," which your Committee have spent some time in trying to understand and reconcile.

Proceedings in Parliament.

Sec. 9.

Demesne.

As to Demesne Lands, the law on that term in the Act of 1870, was that laid down by Lord FitzGerald in Hill *v.* Antrim, and this was the leading case when the Act of 1881 was passed. It defined "demesne land" to be "land within the ambit of "the demesne reserved with the mansion house, and used for purposes of pleasure or for "pasture, and sometimes let to dairymen, or during the minority of an owner." This was disapproved of by the Court of Appeal, when the words came to be considered under the Act of 1881. In that case, land within the walls of a demesne, let to a tenant for a very long time, part of it for 50 years, and treated as an ordinary agricultural farm, was held still to be demesne land. In other cases demesne land let with the mansion house for 62 years was held not to be undemesned. Similarly demesne let on lease since 1828 was excluded. In Spencer *v.* Tedcastle, the Court of Appeal went still further and decided (reversing the Land Commission) that demesne let on a lease *for ever* was not undemesned, and that a fair rent could not be fixed. Again, it has been decided that the acts of a life owner cannot deprive demesne lands of their character, and also, that if the estate be mortgaged, the mortgagee in possession cannot do so. In Magner *v.* Hawkes it was held that demesne may be created by a middleman against a sub-tenant, although let to the former as an ordinary agricultural holding by the head landlord—an owner whose demesne it never had been—and that a lease for 35 years did not undemesne. In Leonard *v.* St. Leger Barry, a tenant was excluded, because a portion of land, originally demesne, was included with ordinary agricultural lands in the same tenancy. In Pratt *v.* Gormanstown, where an ordinary farm, with a ruinous cottage thereon, was taken by a tenant and dovetailed into other lands which he held on lease for ever as demesne, it was excluded, on the ground that it had become demesne. In Borrowes *v.* Colles, an analogous decision was come to. Your Committee are of opinion that the test whether land has been undemesned should be whether or not the letting was made for temporary convenience.

5 I. L. T. R. 70.

986–8.

Griffin *v.* Taylor, 16 L. R. I. 197.

989. 3102–3108.

Various decisions.

Moore *v.* Batt.

Weldon *v.* Coote.

Appendix 14. 10093.

Molony *v.* Hamilton. 933–4, 10973–4. 3109–3114.

Grehan *v.* Pim. 32 L. R. I. 285. 983.

28 I. L. T. R. 69. 3115–3120.

28 I. L. T. R. 41.

True Test.

Pasture Holdings. 1023–1033. 2286. 3240. *sqq.* 5841, 6244, 10414.

The case of pasture holdings also presents unexpected features. If let to be used wholly or mainly for pasture, exclusion takes place unless the tenant resides on the holding, or uses it with the holding on which he resides, but all pasture lettings are excluded, irrespective of residence, if the land is valued at or over 50*l.*

Cases. 3249. 1030–1041.

O'Brien *v.* White, 16 L. R. I. 15.

Varying decisions have been given as to the meaning of the words, "let to be used," "wholly or mainly," and "for the purposes of pasture." On the crag lands of County Clare, a farm of 200 acres, of which only 20 could be ploughed, and 15 tilled by spade labour, was excluded, although no written instrument of letting existed. Mountain grazing would follow the same rule.

At

At first, where a lease contained no covenant against tillage or meadowing a fair rent was fixed, but gradually the law underwent change. The Court of Appeal held parole evidence admissible to prove that land was taken for grazing; and in the case of Fulham *v.* Garry, where the lease expressly demised the lands for "grazing and meadowing only," it was held that parole evidence was admissible to show that the purpose of the letting was for "grazing only." In the absence of any prohibition against meadowing, tenants under the earlier decisions were not excluded, but the Court of Appeal in Byrne *v.* Hill reversed the Land Commission, who had held that a fair rent might be fixed where the hay could be sold off the farm.

Covenant against tillage or meadowing.
Appendix 6 Cherry, p. 336.
Battersby *v.* Nicholson, 22 L. R. I. 38.
30 L. R. I. 603.
3252-3.

Again, it was decided that where the land could not profitably be meadowed, and had been always used for grazing, though no restrictive covenant existed either as to tillage or meadowing, the holding was excluded Pasture land becomes "ancient pasture" in Ireland after 20 years, which it is illegal to break up without permission. Consequently in McCormick *v.* Loftus, although the lease contained no restrictions on tillage or meadowing, it was held that as pasture would be the most profitable user of the holding, which was mainly under ancient pasture, the holding was excluded.

Ancient pasture.
Eivers *v.* Hamilton, 28 L. R. I. 464.
3253.
Cherry, p. 48.
Murphy *v.* Daly, 13 I. C. L. R. 239.
3253.
28 I.L.T.R. 37.

Tillage being now less profitable under the changed condition of agriculture, it is natural and conformable to the policy of these Acts that the limit of exclusion in pasture holdings should be raised. Mr. Justice Bewley suggested that this limit should be altered from 50*l.* to 100*l.* Your Committee, upon consideration, recommend that a limit of 200*l.* should be fixed, in substitution for that contained in Sub-section 3 of Section 58 of the Act of 1881. The provision of Sub-section 4 requiring residence should, of course, be retained. No holdings should be excluded, unless a written instrument of letting had prohibited tillage or meadowing for sale, and the Court had come to the conclusion that this prohibition was inserted *bonâ fide*, and not merely to effect an exclusion from the Land Acts. Dairy farms should not be excluded, whatever might be the valuation.

Suggested limit in particular holdings of exclusion.
10758.
Residence.
Dairy farms.

A tenant is excluded who by sub-letting is not technically in occupation, at the date of the serving of the originating notice to fix a fair rent. This exclusion does not apply (i.) if the tenant has sub-let with the consent of his landlord; or (ii.) if before the Act of 1887 he has sub let to labourers employed on the holding, when the land comprised in each sub-letting does not exceed half an acre; or if the sub-letting made before the passing of the said Act is of a "trivial" character.

Sub-letting

Sub-letting is a great cause of exclusion, especially in Ulster; and the construction of the exceptions raising a number of intricate questions, as to whether assent or acquiescence is consent, what constitutes triviality, and so forth, has, in the opinion of your Committee, operated harshly, and excluded large numbers of tenants from the benefits of fair rent and security of tenure.

Operation in Ulster.
2946.

The general question is undoubtedly one of difficulty. On the one hand, excessive sub-letting is obviously hurtful, while to prohibit or punish sub-letting would be likely to hinder industry, and would tend to drive labourers from the country into the towns. Mr. Neligan, Recorder of Cork, thinks that lettings for labourers should not be deemed sub-letting, but a mere extension of farm buildings. Mr. Justice Bewley suggests that a sub-tenant to any substantial extent should be made an immediate tenant to the head landlord, and that a fair rent should then be fixed on the portion of the holding remaining in the occupation of the tenant.

Difficulties of the question.
5834.
11490.
Mr. Neligan.
Bewley, J.
10267.
5832. 6001.
6934. 7278.
8690. 11490.

Having considered the evidence taken on the subject of exclusions as a whole, your Committee submit the following recommendations:—

FitzGibbon, pp. 144-5.
926.
5827.
9116.

(i.) No holding to be excluded from the Land Acts on the ground that a part of it is not agricultural or pastoral in character, unless such part is in the opinion of the Court the substantial part of the holding.

Recommendations on exclusions.

(ii.) No place to be considered a city or town within the meaning of the sub-section excluding town parks, unless it has a population exceeding 2,000.

(iii.) To admit to the benefit of the Acts, tenants of pasture holdings under 200*l.* valuation.

(iv.) Sub-letting not to be a bar to the fixing of a fair rent, and the tenant to be deemed in occupation of his holding, provided that the sub-letting does not impair the security for the rent.

Lettings by limited owners. 891. 897–925. 2215.

With regard to lettings by limited owners, the present state of the law is manifestly unjust to the tenant. That a tenant should be debarred from fixing a fair rent and be liable to eviction, or, still more extraordinary, should have his statutory term destroyed, and his fair-rent order nullified, not by reason of any act or default personal to himself, or by reason of the character of the holding, but because of limitations affecting his landlord's status in deeds which the tenant can have no knowledge of, is manifestly a gross anomaly. The House of Lords, indeed, on the motion of Lord Cairns, provided expressly in Section 15 for the case of the limited owner, but the House of Commons adhered to its original words, which are wider, and were supposed to meet not only the case put by Lord Cairns, but to cover others not provided for by his amendment.

Hansard, Vol. 264, page 950, and Lords Bills for 1881, Nos. 204 and 207.

Tenants holding under a middleman. 5827. 9116. 10206–7. 10749. *sqq.*

Moreover, where tenants hold under a middleman, whose interest is determined by ejectment for non-payment of rent in consequence of his failure to pay the head-rent, this has been held to determine the tenure of all the occupying tenants, though the ejectment arises through no fault of theirs; and under a re-letting to them by the head landlord they would all become "future" tenants. This is a serious defect in the law, and is the more striking in view of the fact, that if the middleman's interest determines in the natural way by efflux of time, the occupying tenants are protected by the express terms of Section 15, and all are in such case made tenants of the head landlord, enjoying the same tenure as under the middleman.

Exclusion of certain leaseholders and fee-farm grantees. Burton *v.* King-Harman. 28 I.L.T.R. 23. Kelly *v.* Rattey, 3451. 10313. 802. 874. 8069, 4035 *sqq.* 5898.

Certain leaseholders are excluded from the Act of 1887, by reason of the term for which they hold, and certain leaseholders and fee-farm grantees from the Redemption Act of 1891 by reason either of the term for which they hold, or of the nature of the grant, or of the time at which it was made. There is no principle in such exclusions, and these persons should also have the right of resorting to the Court.

County Court Procedure.

Practice in County Courts.

The number of cases heard in County Courts is comparatively small, and the practice is not always uniform. In the County Court system only one valuer goes upon the land, and he is not, moreover, as the lay Assistant Commissioner is, a member of the Court, with a voice in its decision; he has merely a consultative position; he is paid by the day and not by salary. One County Court Judge informed the Committee that as the Judge knows nothing of the facts himself, and has no other mode of arriving at a conclusion as to the value of the land than by adopting the Court valuer's opinion, he, for his part, always felt himself morally bound to accept the valuation of the Court valuer.

Judge Shaw. 9030 to 9032.

Judge Neligan. 11440.

Another County Court Judge, however, assured the Committee that he always applied his own mind to the facts before him, and gave his decision as an act of his own independent judgment. It is difficult to see why a Judge of a County Court should not be as capable of conducting these inquiries efficiently as a legal Assistant Commissioner.

Recommendation.

Your Committee think it expedient that in order to conduce to conformity, the County Court valuer, having first attended the hearing of the case, should then inspect the holding and report thereon, and that judgment should be given in the case at the ensuing sessions.

Ex parte transfers.

Your Committee observe with regret the delay and inconvenience caused by the transfers *ex parte*, on the application of the landlord, of fair-rent applications from the County Courts to the Sub-Commissions.

Recommendation.

Your Committee recommend that such transfers should not be allowed except for substantial cause assigned, and with restrictions on proceeding for the old rent in the interval before judgment.

Costs.

Costs are undoubtedly heavy in proportion to the matter in question. It was stated that where there is no appeal the costs are often between 3*l.* and 4*l.* On the 294,000 cases the reductions amount to 1,270,000*l.* Taking the average reduction as 4*l.* to each tenant, a year of the benefit gained is swallowed up by the cost of the action. Heavy Costs. 362, 368, 1405, 362 3.

Figures were put in showing that, where there is an appeal from the Sub-Commissions to the Chief Court, in cases where the rent does not exceed 5*l.*, the costs could hardly be less than 2*l.*, and might be more than twice that amount; and Mr. Commissioner FitzGerald stated that costs undoubtedly bear "extremely heavily" in small cases. 583 to 593

Miscellaneous.

Your Committee now pass on to various other questions and suggestions that seem to call for the attention of Parliament.

The Committee have had the advantage of hearing explanations from Lord Justice FitzGibbon and Mr. Justice Bewley, on the nature of the statutory term created by the Act of 1881. Nature of Statutory term.

The Lord Justice set forth his views in the following words: "The rent is fixed for "15 years, and it goes on until it is altered; it cannot be altered during 15 years, and "the tenancy remains all through a thing that cannot be determined. After 15 years "the rent is capable of revision; but if it is not revised I suppose it goes on as "before. It is not a 15 years' lease; it is a lease for ever, an undeterminable tenancy "from year to year, with power to fix or to vary the rent every 15 years." Difference of opinion. FitzGibbon, L.J. 3427. 3428.

The view, however, advanced by Mr. Justice Bewley does not seem entirely to coincide with that of the Lord Justice. He quotes from the judgment of the Irish Master of the Rolls, these words: "All that the Land Act does is by negative words "to impose on the landlord a disability to raise the rent or put out the tenant during "the term." And then Mr. Justice Bewley adds, "I have no doubt whatever that that "is the true legal position." And again he says, "If the tenant wants . . . to "retain security of tenure, there is nothing in the Act to give it him unless he acquires "a new statutory term." He also considers it a "moot point" whether, at the expiry of the statutory term, the fair rent goes on, or the old rent revives. It is obviously most undesirable that a doubt once disclosed on so important a matter should continue. Your Committee consider that Lord Justice FitzGibbon correctly interprets the intention of Parliament, and it should be made clear by legislative enactment that, at the end of the statutory term, the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until a new rent shall have been fixed in accordance with the law, and the statutory conditions thereby revived. Bewley, J., 10173. 10184. 10177. Recommendation.

Doubts having been expressed whether the legal status of a judicial tenant can be questioned on the application for a second statutory term, the attention of Parliament is called to this question, with a view to the prevention of needless litigation. Legal status of judicial tenant.

The statutory or judicial term is at present 15 years. There was a general consensus of opinion among the witnesses that the term is too long, for the reason that it is impossible to foresee so far the fluctuation in prices which largely affects the fairness of a rent. The periods suggested range from five years upwards. Two witnesses only opposed any Length of statutory term. Garvey, 11944. Heard, 9567. Doyle, 6921.

Neligan, 11527 to 11536.

any change, on the ground that a short term tends to unsettle the tenant's mind. It should be noticed, however, that of those who propose to shorten the term, Mr. Neligan, who, as a member of the Cowper Commission, recommended a term of five years, did so, on the assumption that it would be possible to arrange an automatic process for fixing rents, which, on the evidence before them, your Committee do not regard as practicable. Mr. Neligan now suggests 10 years as the statutory term.

Recommendation.

Your Committee are of opinion that the statutory term should not exceed 10 years.

Limited administration.

963-971.

On one question, which judicial decision might any day raise to importance, the law was stated to be in a doubtful and unsatisfactory state. If a tenant dies intestate, and legal representation has not been taken out, it is described as being the common practice of landlords and agents to give receipts for rent to the person in occupation, describing the money as paid by "the representatives of A. B.," the deceased tenant. It has been the practice, both of the Land Commission and of Sub-Commissions, under the Statute of 1881, to make an order appointing the widow or child who shall have served an originating notice a limited administrator of the deceased tenant for the purpose of the proceedings. A judgment of the Court of Exchequer has thrown doubt on the power of the Land Commission to exercise this jurisdiction, on the hearing of a fair-rent application. So long as this doubt has not been set at rest by legislation, the Courts may possibly require, in all cases of this kind, that the applicant shall obtain letters of administration from the Probate Division before the originating notice to fix a fair rent could be served, and this necessity would obviously cause both delay and expense.

Turbary.

Bailey 711, 1255-1262, 2113, 2681. Cunningham, 5084. Cunningham, 4512-4518, 4748. Cunningham, 4831. MacAfee, 5814. O'Keeffe, 6194.

Having regard to the evidence adduced on the subject of turbary, to the effect that if the tenant has enjoyed a right of turbary appurtenant to the holding, the Commissioners have no power to secure the turbary to the tenant, so that the tenant is sometimes compelled to pay back for turf as much as he has gained by reduction of rent; and taking into consideration that in many parts turf is a necessity of life, and that oppressive rent is sometimes charged for the privilege of cutting turf, your Committee are of opinion that, when the turbary is outside the ambit of the holding, the Commissioners should have power, in cases where the tenant has hitherto been allowed to cut turf, to secure the right to the tenant on such terms as they may think fit. The same power might be granted with respect to all easements enjoyed with the holding.

Reporting.

1775. 8430 to 8445.

The arrangements for reporting the judgments of the Land Commission have been extremely inadequate, so that even in cases of the first importance, both to landlord and tenant, they are not accessible.

Greer, 8429-45.

Bewley, J. 10096 to 10105.

One legal Assistant Commissioner stated that sometimes six months elapsed before the judgments of the higher courts are available for the guidance of the Assistant Commissioners, and that generally in this respect, though no other branch of law can be practically so important to the people of the country, the absence of regular provision for authorised reports of land cases places the Assistant Commissioners and all concerned at great disadvantage.

Consolidation.

Richey's Irish Land Laws, 1880, p. 115.

One legal witness expressed an opinion that it would be very desirable to consolidate all the Land Statutes from 1860 down to the present time in one code, simplifying, so far as possible, the cross references and artificial definitions of the present Acts. In view of Lord Justice FitzGibbon's description of the existing difficulty arising from the incorporation of several complex and intricate Statutes, and from the mass of undigested legal decisions, your Committee are of opinion that opportunity should be taken as soon as feasible of consolidating the Irish Land Laws in one consistent and intelligible Act, which besides being complete in itself should, in the words of the late learned Professor Richey, "be drawn up in such language, form, and manner, that the landlords and "tenants in Ireland (or at least such of them as are reasonably educated) should, "like the inhabitants of Continental Europe and America, be able, without professional "assistance, to discover their respective rights and duties."

In submitting this Report, with the Minutes of Proceedings and Evidence taken before them, your Committee beg to express their opinion that it is highly desirable that they should be re-appointed in the next Session of Parliament, for the purpose of inquiring into the working and administration of the Purchase Acts, the working of the Land Judges' Court, and the distribution of business amongst the various departments of the Land Commission.

20 *August* 1894.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 26*th April* 1894.

MEMBERS PRESENT:

Mr. Morley.	Mr. T. W. Russell.
Mr. Brodrick.	Colonel Waring.
Mr. M'Cartan.	Mr. Hayes Fisher.
Mr. Robert Reid.	Mr. Macartney.
Mr. Leese.	Mr. Carson.
Mr. Dillon.	Mr. Wharton.
Mr. Sexton.	Mr. Fuller.

Mr. JOHN MORLEY was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 1*st May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Dillon.	Mr. T. W. Russell.
Mr. Hayes Fisher.	Mr. Sexton.
Mr. Fuller.	Colonel Waring.
Mr. T. M. Healy.	Mr. Wharton.
Mr. Leese.	Mr. Brodrick.
Mr. Macartney.	Mr. W. Kenny.
Mr. Robert Reid.	

Mr. *Gerald FitzGerald*, Q.C., examined.

[Adjourned till Friday next, at Eleven o'clock.

Friday, 4*th May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. M. Healy.	Mr. W. Kenny.
Mr. Leese.	Mr. Wharton.
Mr. M'Cartan.	Mr. Carson.
Mr. Dillon.	Mr. Clancy.
Mr. Sexton.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. Fuller.
Mr. Brodrick.	Mr. Robert Reid.
Mr. Macartney.	

Mr. *W. F. Bailey*, examined.

During the absence of the Chairman, Mr. *Leese* took the Chair.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 8*th May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Mr. T. W. Russell.
Mr. Clancy.	Mr. Sexton.
Mr. Brodrick.	Mr. M'Cartan.
Mr. Hayes Fisher.	Mr. Fuller.
Mr. W. Kenny.	Mr. T. M. Healy.
Mr. Macartney.	Mr. Dillon.
Colonel Waring.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *W. F. Bailey*, further examined.

[Adjourned till To-morrow, at Twelve o'clock.

Wednesday, 9*th May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Clancy.	Mr. Dillon.
Mr. Brodrick.	Mr. Sexton.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. Macartney.	Mr. T. M. Healy.
Mr. T. W. Russell.	Mr. M'Cartan.

Mr. *W. F. Bailey*, further examined.

[Adjourned till Tuesday, 22nd May, at Twelve o'clock.

Tuesday, 22*nd May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. Macartney.
Mr. Brodrick.	Mr. Fuller.
Mr. T. W. Russell.	Colonel Waring.

Mr. *W. F. Bailey*, further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 25*th May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. Sexton.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. M'Cartan.
Colonel Waring.	Mr. Leese.
Mr. Macartney.	Mr. T. M. Healy.
Mr. T. W. Russell.	Mr. Brodrick.

Mr. *W. F. Bailey*, further examined.

Mr. *Lawrence Doyle*, examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 29*th May* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Wharton.	Mr. Sexton.
Mr. Hayes Fisher.	Mr. Dillon.
Mr. W. Kenny.	Mr. M'Cartan.
Colonel Waring.	Mr. Leese.
Mr. Macartney.	Mr. Fuller.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. Brodrick.	Mr. Clancy.
Mr. T. W. Russell.	

Lord Justice *FitzGibbon* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 1*st June* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Hayes Fisher.	Mr. Sexton.
Mr. Brodrick.	Mr. M'Cartan.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. Macartney.	Mr. T. M. Healy.
Mr. Solicitor General.	Mr. Clancy.
Mr. T. W. Russell.	Mr. Wharton.
Mr. Dillon.	

Lord Justice *FitzGibbon*, further examined.

Mr. *W. F. Bailey*, further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 5th June 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. M'Cartan.
Mr. Macartney.	Colonel Waring.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Brodrick.
Mr. Sexton.	Mr. Fuller.

Lord Justice *FitzGibbon*, further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday 8th June 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Colonel Waring.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Fuller.	Mr. Carson.
Mr. Macartney.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Brodrick.
Mr. Sexton.	

Colonel *E. R. Bayly*, examined.

Room cleared.

The Committee deliberated.

Motion made and Question put, That the Question of Arrears is within the reference, under which the Committee sits.—(Mr. *T. W. Russell.*)—The Committee divided:

Ayes, 5.	Noes, 6.
Mr. Dillon.	Mr. Brodrick.
Mr. Fuller.	Mr. Carson.
Mr. M'Cartan.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. W. Kenny.
Mr. Sexton.	Mr. Macartney.
	Colonel Waring.

Colonel *E. R. Bayly*, further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday 12th June 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Brodrick.	Mr. M'Cartan.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Wharton.
Mr. Sexton.	

Colonel *E. R. Bayly*, further examined.

Mr. *John Cunningham*, examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 15*th June* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Brodrick.	Mr. Sexton.
Mr. Dillon.	Colonel Waring.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Clancy.
Mr. Macartney.	Mr. Wharton.
Mr. M'Cartan.	Mr. Carson.
Mr. Russell.	

Mr. *John Cunningham*, further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 19*th June* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Sexton.
Colonel Waring.	Mr. Leese.
Mr. Brodrick.	Mr. Fuller.
Mr. Macartney.	Mr. Dillon.
Mr. M'Cartan.	Mr. Hayes Fisher

Mr. *John Cunningham*, further examined.

Mr. *Thomas MacAfee*, examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 22*nd June* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Brodrick.
Mr. Dillon.	Mr. Hayes Fisher.
Mr. Sexton.	Mr. Macartney.
Mr M'Cartan	Colonel Waring.

Mr. *Thomas MacAfee*, further examined.

Mr. *Cornelius O'Keeffe*, examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 26th June 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Colonel Waring.
Mr. Fuller.	Mr. Kenny.
Mr. M'Cartan.	Mr. Brodrick.
Mr. Sexton.	Mr. Macartney.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *Cornelius O'Keeffe* further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 29th June 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Mr. Sexton.
Mr. Fuller.	Mr. M'Cartan.
Mr. Macartney.	Mr. Dillon.
Colonel Waring.	Mr. Brodrick.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *Cornelius O'Keeffe* further examined.

Room cleared.

The Committee deliberated.

Motion made, and Question put, That the Room be cleared.—(Mr. *Brodrick.*)—The Committee divided:

Ayes, 4.	Noes, 4.
Mr. Brodrick.	Mr. Dillon.
Mr. Fuller.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. W. Russell.
Colonel Waring.	Mr. Sexton.

Whereupon the Chairman (Mr. *Leese*) declared himself with the Ayes.

Mr. *Laurence Doyle* further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 3rd July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Solicitor General.	Mr. Sexton.
Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. Brodrick.
Mr. Fuller.	

Mr. *Laurence Doyle* further examined.

Mr. *Thomas Roberts* examined.

Room cleared.

The Committee deliberated.

Motion made, and Question, That the division taken on Friday last on the Motion that the room be cleared was unnecessary, inasmuch as any Member has a right to claim that the room be cleared,—put, and *agreed to*.—(The *Chairman*.)

Motion made, and Question proposed, That the Committee do meet *de die in diem*, unless the Committee otherwise order.—(Mr. *Sexton*.)

Motion, by leave, *withdrawn*.

Motion made, and Question proposed, That the Committee do meet from Eleven to Four on Tuesdays and Fridays.—(Mr. *Brodrick*.)

Question put.—The Committee divided:

Ayes, 5.	Noes, 8.
Mr. Brodrick.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. Fuller.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. M'Cartan.
	Mr. Solicitor General.
	Mr. T. W. Russell.
	Mr. Sexton.

Motion made, and Question proposed, That the Committee do sit on Three days of the week.—(Mr. *Leese*.)

Question put.—The Committee divided:

Ayes, 10.	Noes, 3.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Hayes Fisher.	Mr. Macartney.
Mr. Fuller.	
Mr. Leese.	
Mr. M'Cartan.	
Mr. Solicitor General.	
Mr. T. W. Russell.	
Mr. Sexton.	
Colonel Waring.	

Motion made, and Question proposed, That the Committee do sit on Mondays, Tuesdays, and Fridays.—(Mr. *Leese*.)

Amendment proposed, To leave out the word "Tuesdays," in order to insert the word "Wednesdays."—(Mr. *Carson*.)

Question put, That the word "Tuesdays" stand part of the Question.—The Committee divided:

Ayes, 9.	Noes, 4.
Mr. Brodrick.	Mr. Carson.
Mr. Clancy.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Macartney.
Mr. Fuller.	Colonel Waring.
Mr. Leese.	
Mr. M'Cartan.	
Mr. Solicitor General.	
Mr. T. W. Russell.	
Mr. Sexton.	

Main Question,—put, and *agreed to*.

Resolved, That the Committee do sit on Mondays, Tuesdays, and Fridays.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 6th July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. M'Cartan.
Colonel Waring.	Mr. Clancy.
Mr. Macartney.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Brodrick.
Mr. Sexton.	Mr. Dillon.

Mr. *Thomas Roberts* further examined.

Mr. *Edward Greer* further examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 9th July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. T. W. Russell.
Mr. Macartney.	Mr. Brodrick.
Mr. Hayes Fisher.	Mr. M'Cartan.

Mr. *Edward Greer* further examined.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 10th July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. M'Cartan.
Mr. Solicitor General.	Mr. Hayes Fisher.
Mr. Macartney.	Mr. Brodrick.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. SEXTON took the Chair.

His Honour Judge *James Johnson Shaw* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 13th July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. Carson.
Mr. Sexton.	Mr. Brodrick.
Mr. M'Cartan.	Mr. Macartney.
Mr. Dillon.	

Mr. *Edward Heard*, examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 16*th July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Carson.
Mr. T. M. Healy.	Mr. Macartney.
Mr. M'Cartan.	Mr. Brodrick.
Mr. Sexton.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. W. Kenny.

The Hon. Mr. Justice *Edmund T. Bewley* examined.

The Committee deliberated.

Motion made, and Question proposed, "That the Witness, having read his letter to Lord Justice FitzGibbon, be requested to read the Lord Justice's reply in full"—(Mr. *T. W. Russell*).—Question put.—The Committee divided:

Ayes, 5.	Noes, 3.
Mr. Dillon.	Mr. Brodrick.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. Macartney.
Mr. T. W. Russell.	
Mr. Sexton.	

The Hon. Mr. Justice *E. T. Bewley* further examined.

Letter read accordingly.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 17*th July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Solicitor General.	Mr. Brodrick.
Mr. T. W. Russell.	Mr. Clancy.
Mr. T. M. Healy.	Mr. Dillon.
Mr. Sexton.	Mr. Fuller.
Mr. M'Cartan.	Mr. Hayes Fisher.
Mr. Kenny.	Mr. Carson.
Mr. Macartney.	

The Committee deliberated.

The Hon. Mr. Justice *Bewley* further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 20*th July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Mr. M'Cartan.
Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. Kenny.	Colonel Waring.
Mr. Macartney.	Mr. Fuller.
Mr. Clancy.	Mr. Hayes Fisher.
Mr. Sexton.	Mr. Solicitor General.
Mr. Dillon.	

During the absence of the Chairman, Mr. SOLICTOR GENERAL took the Chair.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 23*rd July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Carson.	Mr. Fuller.
Mr. W. Kenny.	Mr. Brodrick.
Mr. Clancy.	Mr. Leese.
Mr. M'Cartan.	Colonel Waring.
Mr. Dillon.	Mr. Macartney.
Mr. Sexton.	Mr. Solicitor General.
Mr. T. M. Healy.	

During the absence of the Chairman, Mr. LEESE took the Chair.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 24*th July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. M. Healy.
Mr. W. Kenny.	Mr. Sexton.
Mr. Brodrick.	Mr. Dillon.
Colonel Waring.	Mr. Carson.
Mr. Clancy.	Mr. Hayes Fisher.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

Motion made, and Question, "That the Notes of Proceedings in Court of any case with reference to which any Witness has been examined may, on the application of any Member, be inserted in the Appendix"—(Mr. *Carson*),—put, and *agreed to.*

Motion made, and Question proposed, "That the Committee is now in a position to proceed with the consideration of their Report upon the Principles and Practice of the Irish Land Commissioners and County Court Judges in carrying out the Fair Rent and Free Sale provisions of the several Land Acts referred to in the reference, and to suggest improvements as to Law and Practice"—(Mr. *T. W. Russell*).

Amendment proposed, to leave out from the word "That" to the end of the Question, and add the following words "Having regard to the terms of reference, it would be unfair and unsatisfactory that the Committee should report until it hears the evidence of non-official witnesses, and also of those witnesses whose evidence has not been concluded"—(Mr. *W. Kenny*).—Question, That the words proposed to be left out stand part of the Question,—put, and *negatived.*

Question put, That the proposed words be there added.—The Committee divided:

Ayes, 6	Noes, 6.
Mr. Brodrick.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. T. M. Healy.
Mr. W. Kenny.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. W. Russell.
Colonel Waring.	Mr. Sexton.

Whereupon the Chairman declared himself with the Noes.

Another Amendment proposed, after the word "That," to add the following words:—"After taking

taking such evidence as may be tendered in further sittings of the Committee, not exceeding three in number, the Committee will proceed to consider their Report"—(Mr. *Sexton*).—Question put, That those words be there added.—The Committee divided:

Ayes, 6.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. Macartney.
Mr. Sexton.	Colonel Waring.

Whereupon the Chairman declared himself with the Ayes.

Main Question put, "That after taking such evidence as may be tendered in further sittings of the Committee, not exceeding three in number, the Committee will proceed to consider their Report."—The Committee divided:

Ayes, 6.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. Macartney.
Mr. Sexton.	Colonel Waring.

Whereupon the Chairman declared himself with the Ayes.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 27th July 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Colonel Waring.
Mr. Sexton.	Mr. Macartney.
Mr. T. M. Healy.	Mr. W. Kenny.
Mr. M'Cartan.	Mr. Clancy.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Dillon.
Mr. Brodrick.	Mr. Solicitor General.

During the absence of the Chairman, Mr. LEESE took the Chair.

The Committee deliberated.

Correspondence between Mr. *W. F. Bailey* and Lord Justice *FitzGibbon* put in by the Chairman, and read.

Motion made, and Question put, "That a letter from His Honour Judge *Shaw*, supplementing his evidence given to the Committee, should be put on the Notes"—(Mr. *T. M. Healy*).—The Committee divided:

Ayes, 5.	Noes, 6.
Mr. Brodrick.	Mr. Clancy.
Mr. T. M. Healy.	Mr. Fuller.
Mr. W. Kenny.	Mr. Leese.
Mr. Macartney.	Mr. M'Cartan.
Colonel Waring.	Mr. T. W. Russell.
	Mr. Sexton.

His Honour Judge *John Neligan* examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 30*th July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. Leese.
Mr. Brodrick.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. W. Kenny.	Colonel Waring.
Mr. Dillon.	Mr. Fuller.
Mr. Macartney.	

During the absence of the Chairman, Mr. LEESE took the Chair.

The Committee deliberated.

A further letter from Mr. *W. F. Bailey* put in by the Chairman.

Mr. *Toler R. Garvey* examined.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 31*st July* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Carson.	Mr. Clancy.
Mr. Brodrick.	Mr. Sexton.
Mr. Hayes Fisher.	Mr. Dillon.
Mr. Macartney.	Mr. Fuller.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. T. M. Healy.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. T. W. RUSSELL took the Chair.

Mr. *Toler R. Garvey* further examined.

Mr. *William A. Barnes* examined.

Mr. *E. de L. Willis* examined.

Mr. *William Rochfort* was examined.

The Committee deliberated.

Motion made, and Question put, "That the Committee do meet on Tuesday, 14th August, to consider their Report"—(Mr. *Sexton*).

The Committee divided:

Ayes, 7.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Sexton.	Mr. Carson.
Mr. Dillon.	Mr. Hayes Fisher.
Mr. Fuller.	Mr. W. Kenny.
Mr. Healy.	Mr. Macartney.
Mr. Leese.	Colonel Waring.
Mr. Russell.	

[Adjourned till Tuesday, 14th August, at Twelve o'clock.

Tuesday, 14*th August* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Sexton.	Colonel Waring.
Mr. Solicitor General.	Mr. Macartney.
Mr. Leese.	Mr. Kenny.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. M. Healy.	Mr. Clancy.

DRAFT REPORT, proposed by the Chairman, read the first time, as follows:—

"1. No Select Committee of this House has previously inquired into the working of the Irish Land Acts. A Committee of the House of Lords in 1883 met to consider the working of the Land Act of 1881, and a Royal Commission was appointed in 1887 to examine into the Irish Land system, and much evidence was taken by both bodies. Your Committee, however, sat under more narrow terms of reference, and accordingly devoted its entire time, except the last three sittings, to hearing purely official witnesses. At the last three sittings certain evidence was received on behalf of the Irish landlords, but, with this exception, no other than official evidence has been taken. No witness on behalf of the tenants was therefore heard, as your Committee considered it expedient, instead of investigating allegations of individual grievance, whether on the part of tenants or owners, to obtain a general view of the decisions and procedure from the examination of the Judges and officials who administer the Irish Land Code. A small group of witnesses on either side could not have materially widened the basis for trustworthy conclusions. To have gone beyond a small group would have been to involve your Committee in an inquiry hardly less in scope and magnitude than the Devon, the Cowper, or the Bessborough Commissions, and could have added little new light to the testimony of those who are concerned in giving to the administration of the Land Code the operative form upon which the Committee was appointed to report.

"2. Land tenure in Ireland rests upon four principal Acts, those of 1860, 1870, 1881, and 1887. With the Act of 1860 your Committee was not concerned. It regulates the relation of landlord and tenant on the basis of contract, and cannot be said to invest the status of the tenant with any legal privileges.

"3. The Act of 1870, broadly speaking, seeks to protect the tenant's interest in Ulster by legalising the Ulster customs, and elsewhere in Ireland by enabling the tenant (except in certain excluded cases), if evicted capriciously, to sue his landlord for compensation for disturbance according to a certain statutory scale limited in amount, and, on quitting his holding, whether voluntarily or as the result of eviction, to sue for the unexhausted value of certain limited classes of improvements. This Act is no longer much resorted to since the passing of the Land Act of 1881, which gave durability of tenure to the tenant so long as his rent is paid, and enabled him to apply to the Court to fix his rent every 15 years. The Act of 1870, by its terms, powerfully affects the Act of 1881, because its definitions are incorporated therein, and the far-reaching decision of Adams *v.* Dunseath turned on this incorporation of definition. The Act of 1870 included in its general scope all holdings of an agricultural or pastoral character, but the clause in it which did most to protect the tenant's tenure, namely, that granting compensation for disturbance in the case of capricious eviction, was much more limited in its scope, there being a series of exclusions from it whereby certain classes of holdings, such as town parks, demesne lands, grazing lettings, and others which will be afterwards more fully referred to, were excepted from its provisions. These exclusions were re-enacted as regards the tenure clauses of the Act of 1881, and the time of your Committee was largely occupied in considering the effect of the decisions of the Courts on these exclusions as well as on the question of tenants' improvements. Before discussing, however, these important subjects, it will be convenient to survey the course of administration and procedure.

FAIR RENT PROVISIONS: EXTENT OF OPERATIONS.

"4. The number of agricultural holdings in Ireland was stated in the census of 1891 to be 486,865. The total number of holdings in Ireland, extracted from the agricultural statistics, was set down in a recent Parliamentary Paper (No. 260 of 1891) at 552,349. Either of these totals would, no doubt, include some 30,000 holdings purchased by the occupying tenants under the provisions of the several statutes passed from 1869 to 1891.

"5. The total number of fair-rent applications disposed of by the Land Commission from the passing of the Act of 1881 to the 31st of March last was 354,890. The number of these cases "struck out," "withdrawn," or "dismissed," was 60,236, of which were dismissed for various causes, but usually because the applicant was held to be without the requisite legal status, or the holding was declared to be excluded from the operation of the provisions relating to fair rent. The

The remainder of the 60,236 cases 'struck out,' 'withdrawn,' or 'dismissed,' were either struck out or withdrawn. In the former class of cases the applicant did not appear when the case was called; in the latter he intimated that he would not proceed.

"6. Deducting the 60,236 cases 'struck out,' 'withdrawn,' or 'dismissed' from the gross total of applications, 354,890, we find the total number of fair rents fixed to be 294,654. Of these, 157,178 were fixed by the Land Commission Courts, 15,537 by the County Courts, 121,902 by agreements between the landlord and the tenant lodged with the Land Commission or the County Courts, and only 37 by arbitration under Section 40 of the Act of 1881.

"7. It is worthy of notice that in these 37 cases in which rents have been fixed by arbitration, the average reduction was 27·7 per cent., or one-third higher than the average reduction on the total rental dealt with by the Courts, and by agreements, which was 20·8 per cent. But the fact that arbitration has been resorted to in only 37 cases, not one of which occurred within the last five years, proves that Section 40 of the Act has been practically inoperative.

"8. In this connection it may also be observed that, under Section 10 of the Act, only 133 judicial leases have been executed; and, under Sections 11 and 12, no more than 36 fixed tenancies have been created.

"9. It is suggested that many of the 53,000 cases 'struck out' or 'withdrawn' may have been dealt with subsequently on fresh originating notices or by agreements out of Court. This seems to be scarcely more than a speculative opinion.

"10. Of the cases, 157,178 in number, in which fair rents have been fixed by the Land Commission, 4,129 were fixed on consent directly by the Chief Commission, and of these 363 were yearly tenancies, 2,367 leasehold tenancies, 8 under the Redemption of Rent Act, 1891, and 1,391 in which rents were fixed on the reports of valuers appointed on the application of the parties. The number of rents fixed by Assistant Commissioners was 153,049, of which 132,111 were yearly tenancies, 20,639 leasehold tenancies, and 299 Redemption of Rent Act cases.

"11. The average reductions granted were as follows: On reports of valuers, 19·9 per cent. by Chief Commission and Sub-Commission taken together; for yearly tenancies, 21·2 per cent.; for leasehold tenancies, 24·7 per cent., and in cases under the Redemption of Rent Act, 1891, 25 per cent.

"12. The number of originating notices lodged with the County Courts was 34,453; but, under the power given by Section 37, Sub-section 4, of the Act of 1881, authorising the Land Commission, on the application of any party to proceedings in the County Courts, to the transfer of such proceedings from the County Court to the Land Commission, no fewer than 10,374 of the 34,453 cases initiated in the County Courts were transferred to the Sub-Commissions, the originating notice being usually lodged by the tenant. The application to transfer the proceedings was usually made by the landlord.

"13. The transfer to the Sub-Commission of 10,374 out of the 34,453 originating notices lodged with the County Courts, left 24,079 cases to be disposed of by those tribunals. Of the total, rents were fixed in 15,537 cases; 13,585 being yearly tenancies and 1,952 leasehold tenancies. The average reduction of rent for the yearly tenancies, was 23·4, or 2·2 more than the corresponding reduction (21·2) given by the Land Commission Courts. The average reduction for leasehold tenancies was 27·7, being 3 per cent· more than the corresponding reduction (24·7) in the Courts of the Land Commission. Appeals to the Land Commission against the decisions of the County Courts were lodged in 4,097 of the 15,537 cases; and of these 1,515 were withdrawn, and 2,192 have been heard. The result was an average increase by 3·1 per cent. of the rents as fixed by the judgments of the County Courts.

"14. Deducting from 24,079 cases left to be disposed of by the County Courts, 15,537 in which rents were fixed by these tribunals, there remains to be accounted for 8,542 cases.

"15. Of these, 3,413 are said to have been 'dismissed,' 'struck out,' or 'withdrawn,' leaving undisposed of 5,129.

"16. Of the cases, 121,902 in number, in which rents were fixed by agreements between landlords and tenants, 114,724 were fixed by agreements lodged with the Land Commission, and 7,178 by agreements lodged with the County Courts. The particulars of these agreements supplied in the annual reports of the Land Commission do not distinguish, as in the case of rents fixed by the Courts, between yearly and other tenancies.

"17. It is shown, however, that the average reduction in the former rents made by agreements lodged with the Land Commission has been 17·7, as against 21·2 for yearly tenancies, 24·7 for leasehold tenancies, and 25·0 under the Redemption of Rent Act, in cases decided by the Chief Commission and Sub-Commissions, and 19·9 in cases in which rents were fixed on the reports of valuers appointed upon the application of the parties. The average reduction made by agreements lodged with the County Courts was 17·2, as compared with 23·4 for yearly tenancies, and 27·7 for leasehold tenancies in cases heard and determined by the County Courts.

"18. There is to be observed a still more remarkable difference between the reductions made in rents fixed by agreement and those settled by arbitration. As we have noted, the average reduction made by agreements lodged with the Land Commission was 17·7, and with the County Courts 17·2, but the average reduction was no less than 27·7 in cases of rents determined by arbitration. By far the greater number of the 121,902 agreements were made between 1881 and 1885, when the reductions in the Courts were made smaller than in subsequent years and down to the present time. The agreements lodged in the year to August 1882 were 12,475; to August

1883, 36,005; to August 1884, 24,094; and to August 1885, 11,656; making for the first four years a total of 84,230, or more than two-thirds of the whole number of agreements.

"19. The general effect of the evidence given before your Committee as to the course of prices and the cost of production sustains the conclusion that the rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive. This observation is applicable in a more extreme degree to the agreements made before 1886, because the reductions secured by them were much more limited in amount, as we have already shown, than those obtained within the same period from the Courts.

"20. Your Committee beg to direct attention to a Paper (Appendix No. 7, Table V.) handed in by Mr. W. F. Bailey, Legal Assistant Land Commissioner. It furnishes examples of 50 cases in his district in which agreements had been made between landlords and tenants, within the period from 1882 to 1887, but the agreements not having been filed, as required by rule, were not binding between the parties, and the tenants came into Court to have fair rents fixed in 1893 and 1894. The result demands particular attention. The old rents in the 50 cases had amounted to 790*l.* The reductions made by agreement amounted to 142*l.*, leaving the rents as agreed upon 648*l.* When the tenants came into Court the 648*l.* was further reduced by 168*l.*, bringing down the judicial rents to 480*l.* Thus, after an average reduction of 19 per cent. had been made by the agreements, a further reduction of 20 per cent. was ordered by the Court. It was only owing to the omission to file these agreements that the Court was able to intervene.

"21. The decisions of Sub-Commissions in fair rent cases are subject to re-hearing by the Land Commission upon the application of either of the parties; and in like manner an appeal may be taken to the Land Commission from a fair rent decision of a County Court. The rents fixed by the Sub-Commissions to the 31st of March last were 153,049; the applications for re-hearing numbered 38,524, of which 17,784 were withdrawn, and 19,655 have been heard by the Land Commission. As already noted, the decisions of the County Courts were 15,537; the appeals, 4,097; the appeals withdrawn, 1,515; and the appeals heard, 2,192.

"22. Thus it will be seen that 168,586 cases were decided by the subordinate Courts: the appeals and applications for re-hearings were 42,621; and of these 19,299, or nearly one-half, were withdrawn, and 21,847 went to judgment.

"23. The rents fixed by the Sub-Commissions in the 19,655 cases subjected to re-hearing amounted to 431,398*l.*; the net result of the re-hearings was to increase this amount by 1,282*l.* or only 0·2 per cent. In the 2,192 cases brought up from the County Courts, the rents fixed by those Courts amounted to 35,473*l.*; this amount was increased on appeal by 1,101*l.*, or 3·1 per cent. The gross amount of rental dealt with by re-hearing or appeal was not affected, it will be observed, to any material extent. In a number of cases, relatively minute, substantial increases or reductions were made, but the general result has been to confirm the rent as fixed by the Court below, to add a small percentage to that rent, or to subtract a small percentage from it.

"24. The system of re-hearing on all questions of value deters many tenants, in our opinion, from making application to have fair rents fixed at all; it entails grievous delays; it protracts uncertainty; it imposes heavy costs, oppressive to a humble class of suitors; it necessitates expenditure out of all proportion to the practical result. The 21,847 re-hearings and appeals, the effect of which was to add but 2,383*l.* to 467,141*l.* of rental, as fixed by the Courts below, must have cost the parties at least a quarter of a million sterling, and this vast expenditure was incurred, in the case of nine-tenths of the appeals (those from the Sub-Commissions), in order to subject the decision of a Court, two of the three members of which are agricultural experts, who themselves inspect the holding, to be reviewed by another Court, no member of which inspects the holding, and no member of which need be an agricultural expert, although the question to be determined is one of the value of land.

"25. Your Committee would recommend that, in any case in which the parties so desire, a holding might be inspected by one or two valuers in advance of the hearing of the case by the Sub-Commission. If this valuation be accepted by the parties, it should be fixed as the fair rent for the Statutory term. If either party declines to accept the valuation, the case would then be heard by the Sub-Commission in the ordinary course, and in this event such hearing would serve as an appeal. But your Committee are of opinion, upon the facts before them, that where the Judgment of a Sub-Commission on a question of value is unanimous, there should be no re-hearing; nor in case of dissent, unless it affects the question of value to the extent of at least 15 per cent. of the rent as fixed by the Court.

"Exclusions.

Exclusions.

"26. Important evidence was taken on the number of the exclusions from the benefits of the Land Act; that is to say, of the large classes of holdings upon which a fair rent cannot be fixed. Some of these exclusions are due to direct statutory provision; others are deduced by judicial interpretation and decision.

Appendix. No. 3, Table 1,

"27. A table was handed in by Mr. W. F. Bailey giving a list of these exclusions, and the reference to the section of the Statute, or to the legal decision, under which each class of cases is shut out from the benefit of the Act.

"28. The subject of the exclusions from the Acts falls under four main heads:—Holdings expressly excluded, as town-parks, demesne lands, pasture lettings, &c., &c.; those which are excluded by reason of sub-letting, a bar which is sometimes got rid of where the sub-tenant agrees to

to surrender; holdings excluded because they are held under lettings made by limited owners; and lastly, 'future' tenancies, which may be held either by men who in 1881 were 'present' tenants, which have since been broken by judgments in ejectment, or may represent lettings made since the Land Act of 1881 was passed. All lettings after that date are 'future' tenancies, except lettings made before 1st January 1883 to persons who were tenants when the Act of 1881 came into operation.

"29. When it is remembered that since the passing of the Land Act of 1881 there have been over 33,000 evictions or notices terminating the tenancy, it will be seen how large is the number of 'future' tenancies now called into existence. Moreover, where tenants hold under a middleman whose interest is determined by ejectment for non-payment of rent in consequence of his failure to pay the head-rent, this has been held to determine the tenure of all the occupying tenants, though the ejectment arises through no fault of theirs, and under a reletting to them by the head landlord they would all become 'future' tenants. This is a serious defect in the law, and is the more striking in view of the fact that if the middleman's interest determines in the natural way by efflux of time, the occupying tenants are protected by the express terms of the Act of 1881, and all are in such case made tenants of the head landlord, enjoying the same tenure as under the middleman.

Definitions.

"30. The exclusions in Section 58 of the Act, 1881, are taken (with the unimportant addition of glebe lands) from the Act of 1870, but several of the decisions on that Act have not been followed since 1881, with the result that many holdings are now excluded, which, if the law had remained as it stood when the Act of 1881 was passed, would be entitled to the benefit of that measure. Indeed, the latest text writers on the Irish Land Code (Cherry and Wakely, pages 169, 170), speaking of the decisions on the definitions in the Act of 1870, say, 'Many are of little value, 'as they have been practically over-ruled by the decisions of Courts of superior authority under 'the Act of 1881.' Yet the definitions in the Act of 1870 tally substantially with those in the Act of 1881.

Town parks.

"31. The definition of town parks in Section 15 of the Act of 1870, and Section 58 of the Act of 1881, excludes 'any holding ordinarily termed town parks, adjoining or near to any city or town, 'which bears an increased value as accommodation land over and above the ordinary letting value of 'land occupied as a farm, and is ("shall be" in the Act of 1870) in the occupation of a person 'living in such city or town, or the suburbs thereof, and pursuing therein a trade or business other 'than that of a farmer.' So microscopic is the nicety of judicial interpretation, that on the difference between '*shall be* in the occupation of a person living in such city or town,' in the Act of 1870, and '*is* in the occupation,' in the Act of 1881, it was held under the former Act where the tenant ceased to reside in the town that the land ceased to be town parks (Talbot *v.* Drapes, (5 I. L. T. R., 143), whereas the contrary decision was arrived at under the Act of 1881 (Nelson *v.* Headfort, 18 L. R. I. 407). The Act of 1887 has now declared the law in accordance with the latter decision.

"32. But it is on the question of the size of 'city or town' that the fluctuation of decision has been most embarrassing. For instance, it was held under the Act of 1870 that Portglenone, with a population of 800, and Newmarket, with a population of 765, were not large enough to be 'towns,' and, therefore, could not have town parks. Following these decisions, the Land Commission in the earlier administration of the Act of 1881, held that Borrisokane and Kircubbin, with populations of 700 and 600, were too small to have town parks, but later on Hacketstown, a place of 'over 600 inhabitants,' and Newport, with a population of 683, were held to have 'town parks,' and in the present year Caledon, with a population of 700, has been held to be a town.

"33. The uncertainty of the law on town parks led the Cowper Commission to recommend that a town to exclude, under Section 58, should have 5,000 inhabitants, where the holding was more than five acres in extent. In the Land Bill of 1887, introduced by the Government, 2,000 was inserted as the population limit in the House of Commons, but the House of Lords rejected the proposal. The Act of 1887, however, attempted to apply a remedy in another way, by enacting that a holding shall not constitute a town park 'if it is let and used as an ordinary agricultural farm,' provided its inclusion, under the operation of the Act of 1881, does not 'substantially interfere with the improve-'ment of the city or town to which it belongs or the accommodation of the inhabitants thereof.' A variety of decisions followed as to the meaning of this definition, and authorities have also accumulated as to the meaning of 'suburbs,' 'accommodation land,' 'increased value,' 'ordinarily termed town parks,' which your Committee have spent some time in trying to understand and reconcile.

Demesne.

"34. As to Demesne Lands, the law on that term in the Act of 1870, was that laid down by Lord FitzGerald in Hill *v.* Antrim (5 I. L. T. R. 70), and this was the leading case when the Act of 1881 was passed. It defined 'demesne land' to be 'land within the ambit of the demesne 'reserved with the mansion house and used for purposes of pleasure or for pasture, and sometimes 'let to dairymen or during the minority of an owner.' This was disapproved of by the Court of Appeal, when the words came to be considered under the Act of 1881 (Griffin *v.* Taylor, 16 L. R. I. 196.) In that case, land within the walls of a demesne, let to a tenant for a very long time, part of it for 50 years, and treated as an ordinary agricultural farm, was held still to be demesne land. In other cases demesne land let with the mansion house for 62 years was held not to be undemesned (Moore *v.* Batt). Similarly demesne let on lease since 1828 was excluded (Weldon *v.* Coote). In Spencer *v.* Tedcastle the Court of Appeal went still further and decided (reversing the Land Commission) that demesne let on a lease *for ever* was not undemesned, and that a fair rent could not be fixed. Again, it has been decided (Molony *v.* Hamilton) that the acts of a life owner cannot deprive demense lands of their character, and also, that if the estate be mortgaged the mortgagee in possession cannot do so (Grehan *v.* Pim). In Magner *v.* Hawkes (32 L. R. I. 285) it was held

that demesne may be created by a middleman against a sub-tenant, although let to the former as an ordinary agricultural holding by the head landlord—an owner whose demesne it never had been —and that a lease for 35 years did not undemesne. In Leonard *v.* Barry, a tenant was excluded because a portion of land originally demesne was included with ordinary agricultural lands in the same tenancy. In Pratt *v.* Gormanstowne (28 I. L. T. R. 69), where an ordinary farm, with a ruinous cottage thereon, was taken by a tenant and dovetailed into other lands which he held on lease for ever as demesne, it was excluded, on the ground that it had become demesne. In Borrowes *v.* Colles, 28 I. L. T. R. 41, an analogous decision was come to.

"35. Your Committee are of opinion that the law should be restored to its condition when the Act of 1881 was passed, and that the test whether land has been undemesned is whether the letting was made for the temporary convenience of the owner, so that if he has demised it on lease for ever or for any term over 21 years the holding should not be excluded.

Pasture Holdings.

"36. The case of pasture holdings also presents unexpected features. If let to be used wholly or mainly for pasture, exclusion takes place unless the tenant resides thereon, or uses the pasture holding with the holding on which he resides, but all pasture lettings are excluded, irrespective of residence, if the land is valued at or over 50*l.*

"37. Varying decisions have been given as to the meaning of the words 'let to be used' 'wholly or mainly' and 'for the purposes of pasture.' On the crag lands of County Clare, a farm of 200 acres, of which only 20 could be ploughed, and 15 tilled by spade labour, was excluded, although no written instrument of letting existed (O'Brien *v.* White, 16 L. R. I. 15). Mountain grazing would follow the same rule.

"38. At first, where a lease contained no covenant against tillage or meadowing, a fair rent was fixed, but gradually the law underwent change. The Court of Appeal held parol evidence admissible to prove that land was taken for grazing (Battersby *v.* Nicholson, 22 L. R. I. 38); and in the case of Fulham *v.* Garry, where the lease expressly demised the lands for 'grazing and meadowing only,' it was held that parol evidence was admissible to show that the purpose of the letting was for 'grazing only.' In the absence of any prohibition against meadowing, tenants under the earlier decisions were not excluded, but the Court of Appeal in Byrne *v.* Hill (30 L. R. I. 603) reversed the Land Commission, who had held that a fair rent might be fixed where the hay could be sold off the farm.

"39. Again it was decided that where the land could not profitably be meadowed, and had been always used for grazing, though no restrictive covenant existed either as to tillage, or meadowing, the holding was excluded (Rivers *v.* Hamilton, 28 L. R. I. 464). Pasture land becomes 'ancient pasture' in Ireland after 20 years (Murphy *v.* Daly, 13 I. C. L. R., 239), which it is illegal to break up without permission. Consequently in McCormick *v.* Loftus (28 I. L. T. R. 37), although the lease contained no restrictions on tillage or meadowing, it was held that as pasture would be the most profitable user of the holding, which was mainly under ancient pasture, the holding was excluded.

"40. Mr. Justice Bewley recommended that, tillage being now less profitable under the changed conditions of agriculture, the limit of exclusion in pasture holdings should be raised from 50*l.* to 100*l.* In this recommendation your Committee concur in substitution for Sub-sections 3 and 4, Section 58 of the Act of 1881. They are of opinion, however, that dairy farms should not be excluded, irrespective of valuation; and that no holdings should be excluded, unless a written instrument of letting prohibited tillage or meadowing for sale, and the Court came to the conclusion that this prohibition was inserted *bonâ fide*, and not merely to effect an exclusion from the Land Acts.

"41. A tenant is excluded who by sub-letting is not technically in occupation at the date of the serving of the originating notice to fix a fair rent. This exclusion does not apply (i.) if the tenant has sub-let with the consent of his landlord: or (ii.) to labourers employed on the holding and not exceeding half an acre; (iii.) if the sub-letting is of a 'trivial' character.

5846.

"42. Sub-letting is a great cause of exclusion, especially in Ulster, and the construction of the exceptions raising a number of intricate questions as to whether assent or acquiescence is consent, what constitutes triviality, and so forth, is stated to have operated harshly.

"43. The general question is undoubtedly one of difficulty; on the one hand, excessive sub-letting is obviously hurtful, while to prohibit or punish sub-letting would be likely to injure industry, *e.g.*, in the neighbourhood of scutch mills, and tends to drive young labourers from the country into the towns. Mr. McAfee suggests that half an acre should be the limit for sub-letting. Mr. Neligan thinks that lettings on a holding for labourers should not be called sub-letting, but a mere extension of farm buildings. Mr. Justice Bewley suggests that a sub-tenant to any substantial extent should be made an immediate tenant to the head landlord. This plan, if it were feasible, would operate in those cases where, owing to the determination of the intermediate tenancy, the sub-tenants also are determined.

5834. 11490. 10267. FitzGibbon. pp. 144-5. 926. 5827. 9116.

"44. To summarise the effect of the evidence taken on the subject of exclusions, your Committee submit the following recommendations:—

Recommendations on exclusions.

"(i.) No holding to be excluded from the Land Acts on the ground that a part of it is not agricultural or pastoral in character unless such part is in the opinion of the Court substantial in amount or character, having regard to the remainder of the holding.

"(ii.) Town park to be defined as a parcel of land near a city or town let for the accommodation of the tenant as a resident in such city or town, or in the suburbs thereof, and which is used by him as accommodation land, and not to make a profit by farming.

"No

"No place shall be considered a city or town unless it has a population exceeding 2,000 at last census.

"(iii.) To admit to the benefit of the Acts tenants of pasture holdings under 100*l.* of valuation.

"(iv.) Where a mill exists on a holding, the Court to have power to fix a fair rent, unless of opinion that the mill is the substantial part of the building.

"(v.) Sub-letting not to be a bar to an application for a fair rent where landlord has 'assented' or raised no objection, subject to the discretion of the Court, if necessary, and provided that it does not impair the security for the rent.

"45. A tenant to be deemed in occupation of his holding, notwithstanding that he has sub-let houses erected on the holding, and which are his own property, to labourers employed in the district, provided that the Court is opinion that such sub-lettings do not impair the security of the landlord for the rent.

"46. With regard to lettings by limited owners, the present state of the law is manifestly unjust to the tenant. That a tenant should be debarred from fixing a fair rent and be liable to eviction, not by reason of any default or defect personal to himself, or by reason of the character of the land, but because of limitations affecting his landlord's status in deeds which the tenant can have no knowledge of, is manifestly a gross anomaly. The House of Lords, indeed, on the motion of Lord Cairns (Hansard, Vol. 264, page 950, and Lords' Bills for 1881, Nos. 204 and 207) provided expressly in Section 15 for the case of the limited owner, but the House of Commons adhered to its original words, which are wider, and were supposed to meet not only the case put by Lord Cairns, but to cover others not provided for by his amendments. The Irish Courts, however, held that Section 15, as passed, did not include the case of a limited owner, and your Committee recommend that the law should be altered to cover it.

"46*. Certain leaseholders are excluded both from the Act of 1887 and the Redemption Act of 1881 by reason of the term for which they hold (Burton *v.* King-Harman, 28 I.L.T.R. 23). There is no principle in such exclusions, and they should also have the right of resorting to the Court.

"47. Very many Irish estates are in the hands of receivers, and all lettings made by the Land Judge's Court are excluded from the Land Acts, on the theory that they are lettings for 'temporary convenience.' Tenants holding under such circumstances should be placed on the same footing as other tenants to whom the Acts apply.

"IMPROVEMENTS.

"48. The recognition by Parliament of the interest which the Irish tenant possesses in his holding is principally due to the fact that in Ireland farm buildings, drainage, reclamation, and other improvements, which would in England be regarded as a necessary portion of the equipment of a farm, are almost invariably the work of the tenant, and hence in estimating a 'fair rent,' contention centres on the value and legal ownership of these improvements. The other ingredients of the fair-rent problem, such as the questions of price and yield, are comparatively easily dealt with. The natural quality of the soil is also, relatively speaking, a simple question; but the additional fertility it has received by improvements, the legal interest of landlord and tenant therein, and the apportionment of the value thereof between both, present, in the existing state of the law, much difficulty.

"49. Section 8, Sub-section 9, of the Act of 1881 provides:

> "'No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title.'

"50. The administration of this important provision is seriously affected by the fact that it was held in the case of Adams *v.* Dunseath that outside Ulster these 'improvements' are only such as a tenant could, under the Act of 1870, claim compensation for on quitting, and that the 'enjoyment' of improvements made before 1870 is to be taken into account in the landlord's favour. Where the Ulster custom prevails this doctrine does not apply.

"51. The aspect in which improvements are regarded in the two Acts was entirely different. The Act of 1870 prescribed the measure of compensation to be paid by the landlord to the tenant after eviction; that of 1881 prescribed the fair rent to be paid by the tenant to the landlord during occupation.

"52. The majority of the judges, however, in Adams *v.* Dunseath held that the enactment in Section 8, Sub-section 9, of the Act of 1881, already cited, relates only to such improvements as the tenant could claim compensation for under the Act of 1870; and that as the 'enjoyment' of such improvements must, by Section 4 of the latter Act, be taken into account against an evicted tenant, in reducing an award of compensation, such 'enjoyment' should also reduce the allowance made in the fair rent of the sitting tenant for his improvements. Moreover, the Court held that as the Act of 1870 debarred an evicted tenant from claiming compensation for a number of improvements in specified cases, so these excluded improvements were also to be credited to the land-

lord in fixing the fair rent. Again, as improvements of a kind not suitable to the holding are not upon eviction (for obvious reasons) to be paid for by the landlord, under the Act of 1870, so a superior house on a small farm may have rent imposed on it under the Act of 1881. Furthermore, as tenants of over 50*l.* valuation can contract themselves out of any right to compensation under the Act of 1870, so under the Act of 1881 a leaseholder is not exempted from rent on any improvements he has made if his lease contains a covenant that he is not to claim for them on quitting his holding. Such was the decision in the leading case affecting leaseholder's improvements, of O'Neill *v.* Cooper (unreported). There the lease contained a covenant that the tenant was not to claim compensation for improvements at its expiration. Subsequently the Land Act of 1881 gave tenants at the end of their leases practical perpetuities, and the Act of 1887 conferred upon lessees the right of applying to fix a fair rent. But because of the 'contracting-out' covenant, not to claim compensation for improvements when the lease came to an end, the landlord was held entitled to rent on them while the tenancy continued in existence. This case ruled all others where a lease contained similar provisions.

"53. On the two cardinal issues affecting improvements decided by the majority of the judges in Adams *v.* Dunseath, Parliament strove, only six months previously, to prevent the possibility of such a construction being given to Sub section 9, Section 8, as the Court of Appeal declared to be the law.

"54. In the first draft of the Land Bill of 1881, as introduced into the House of Commons, the following limitation on the measure of the tenant's interest, was contained in the Fair Rent Section. 'The Court, in fixing such rent, shall have regard to the tenant's interest in the holding, and the tenant's interest shall be estimated with reference to the following considerations, that is to say :—

> "(*a.*) In the case of any holding subject to the Ulster Tenant Right Custom, or to any usage corresponding therewith, with reference to the said custom or usage.
>
> "(*b.*) In cases where there is no evidence of any such custom or usage, with reference to the scale of compensation for disturbance . . . . and to the right (if any) to compensation for improvements effected by the tenant or his predecessors in title."'

"55. This provision the House rejected, and subsequently Sub-section 9 was inserted, which, as it passed the House of Commons, simply ran : 'No rent shall be made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title" (Lords' Bill, No. 107 of 1881). In this shape the clause was struck out by the House of Lords.

Hansard, Vol. 264, pages 1475–7.

"56. Upon the Bill being returned to the Commons the words were reinstated, but the Irish Attorney General, Mr. Law, proposed the following limitation : 'And for which the tenant would be entitled to compensation under the provisions of "The Landlord and Tenant (Ireland) Act, 1870," as amended by this Act.' This exactly corresponded to what, in Adams *v.* Dunseath, was afterwards declared to be the law, but the House refused to accept the words, and the Government actually were obliged to vote against their own amendment, which was rejected by a majority of 134.

"57. The Irish Attorney General then proposed the addition of the following words 'and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or compensated by the landlord or his predecessors in title.' This addition was unanimously agreed to. Thereupon Sir Stafford Northcote, the Leader of the Opposition, proposed (Hansard, Vol. 264, p. 1488) the addition of the words as to 'enjoyment' from Section 4 of the Act of 1870 :

Sir S. Northcote 10th August 1881.

"58. 'The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.' These words, which the Court of Appeal in Adams *v.* Dunseath declared must be read into Sub-section 9, Section 8, the House of Commons rejected by a majority of 130. The Prime Minister, in refusing to accept them, used the following language :—

Mr. Gladstone.

"59. 'The doctrine accepted at the time of the Land Act of 1870, and which he certainly declined to accept the night before, was the doctrine that the enjoyment by the tenant for a certain time of his own improvements might have reimbursed him for the cost of these improvements, and by a natural process they passed over to the landlord. But that was not the basis on which they proceeded now, and there was no occasion for it. The tenant's improvements were the tenant's own property, and he would not admit the principle that the time during which he had enjoyed those improvements was any reason for their passing away from him.'

Mr. Gladstone, 9th August 1881.

"60. On the previous day Mr. Gladstone had made this declaration : 'In the Act of 1870 we did, in respect to the tenant, recognise the principle that he might be compensated by a reasonable lapse of time in respect of improvements he had made, and that the use and profit of these improvements for a certain time might be considered as compensation, but we do not recognise that principle in the present Act. None of the enactments of the present Bill are founded on that principle. . . . It is much better, I think, that those who make improvements should have the whole benefit of the improvements.'

"61. When

" 61. When the Bill was sent back to the Upper House the Lords inserted the words proposed by Sir Stafford Northcote as to enjoyment, which had been rejected by the Commons, and the clause therefore had the following limitation attached to it, viz. :—

" 62. ' The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.'

" 63. Once more the House of Commons rejected these words, this time by a majority of 128. Hansard, Vol. 264, p. 1969.

" 64. The word 'otherwise' was then inserted before ' compensated,' and the Lords subsequently agreed to the clause in the shape in which it now stands. It cannot, therefore, be matter for surprise that the Irish tenantry should seek for a restoration of that property in their improvements which Parliament unquestionably intended to declare to be their right.

" 65. Even if the records of the House did not so unmistakably show the intention of the Legislature, it is plain that it cannot equitably be argued that because certain improvements do not fulfil the technical legal conditions to entitle an evicted tenant to be compensated for them under the Act of 1870, the landlord is entitled to charge rent on them to the sitting tenant under the Act of 1881 as if the landlord had paid for them out of his own pocket. Yet the law has been administered on this principle for 13 years, and over 300,000 rents have been fixed, subsequent to the decision referred to.

" 66. The following is a summary of the more important classes of improvements in respect of which a tenant cannot claim compensation under the Act of 1870, and on which, therefore, owing to the decision in Adams *v.* Dunseath, he may now be rented when a fair rent is being fixed :—

" 67. First. Improvements not 'suitable to the holding' (Act of 1870, Section 70). Thus, if a tenant builds a dwelling-house of superior character to the necessities of the farm, or, if having several holdings, he erects on one of them farm-buildings for the whole, and which are therefore in excess of the requirements of the particular holding, in these and similar cases the improvements are ' not suitable' to the holding,' and the tenant may be rented on the buildings he has himself erected.

" 68. Second. Improvements in respect of which a tenant, whose aggregate poor law valuation is 50*l.* or upwards, has contracted in writing not to claim compensation on quitting his holding. The Act of 1870 permitted such tenants to contract out of the Act (Section 12), and, as we have seen in leases made after the Act of 1870, such contracts were inserted. Yet, although the contract was only made with a view to the provisions of the Act of 1870, the improvements not being subject to compensation under that Act, the landlord is entitled to rent on them under the Act of 1881.

" 69. Third. Improvements made in pursuance of a contract entered into for valuable consideration therefor (Act of 1870, Sections 45 and 100). This exemption was presumably intended to protect the landlord who had actually paid the tenant for making the improvements; but the words ' valuable consideration ' legally cover a number of cases where in reason and equity the tenant is entitled to the benefit of his improvements. Thus, where a lease is made at a rack-rent, and a clause is inserted binding the tenant to erect buildings or execute some other improvements at his own expense, the mere granting of the lease, no matter how high the rent may be, is in law a ' valuable consideration ' for the tenant's contract. He is therefore disentitled to claim compensation on quitting his holding for any improvement so executed, and the landlord, when a fair rent is fixed, is entitled to rent on such improvement, exactly as if the tenant found it there when he became tenant.

" 70. Fourth. Improvements made before the passing of the Act of 1870, and 20 years before the claim for compensation (or fair rent application) is made (Act of 1870, Section 4, Sub-section 1*a*), *except* permanent buildings and reclamation of waste land. The most important improvement excluded by this exemption is drainage executed on land not absolutely ' waste.' Land, no matter how bad, which has previously been cultivated, or which is even fit for coarse grazing, however inferior, is not technically ' waste.' The drainage of such land must naturally be more common than the drainage of land absolutely ' waste,' and requires a costly class of improvement Fences, farm roads, tree planting, are also excluded by this exemption.

" 71. Fifth. Improvements made during the continuance of a lease for a term of 31 years or upwards, *except* permanent buildings and reclamation of waste land and unexhausted tillages and manures (Act of 1870, Section 4, Sub-section 3). The remark just made as regards drainage, fences, farm roads, tree planting, also applies to this exemption.

" 72. Sixth. Improvements made by a tenant holding under a fee farm grant or lease for ever. This exemption only has application where a tenant is having a fair rent fixed under the provisions of the Redemption of Rent (Ireland) Act, 1891, passed in the interest of long leaseholders. The definition of ' tenant ' under the Act of 1870 (Section 70) does not include a tenant under a fee farm grant or a lease for ever, and such a tenant can therefore make no claim for compensation under that Act. Accordingly, where such a tenant is now entitled to fix a fair rent, the landlord is entitled to claim rent on his improvements. A Bill to remedy this passed the House of Commons last year, but the Lords did not agree to it. 802–7. 8074–84. 1686. 4035. 10318.

"73. The branch of the decision in Adams *v.* Dunseath, dealing with the word 'improvement,' is also highly important. The definition of this word was contained in the Act of 1870, and was declared to extend to the Act of 1881. The material part of this definition declares 'improvement' to be 'any work which, being executed, adds to the letting value of the holding.' In consequence of the use of the word 'work,' the Court of Appeal drew a distinction between the increased letting value arising from the improvement, and the improvement or improvement work itself, and some of the Land Commission Courts seem to have held that the Act gave the tenant no share in the increased letting value which his improvement had created, but merely a right to a reasonable dividend in the shape of interest on the actual money value of the improvement.

"74. From some evidence before us, the Committee at one time supposed that the Land Commissioners considered the Court of Appeal to have decided that the landlord was entitled to the whole of the increased letting value of a holding resulting from a tenant's improvement, after deducting a reasonable interest on the actual cost of the improvement work. Mr. Justice Bewley denied this, and from the evidence of Lord Justice Fitzgibbon, what the Court apparently decided was that this surplus did not necessarily in all cases go to the tenant, but was to be allocated as between landlord and tenant, according to their several interests in the holding, having regard to all the facts of the case.

"75. The interference of Parliament is required in order to ascertain and secure to the tenant his share as a recognition of his occupation right in the improved letting value which has been elicited from the soil by his improvements.

"76. In addition to formal exemptions of the improvements, the Act of 1870 also provides (Section 4) that even in cases where the tenant is not excluded from claiming compensation, the Court, in awarding compensation for improvements made before the passing of the Act, and under a tenancy existing at its passing, shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantages of such improvements, and the rent at which such holding has been held. The Court of Appeal, in Adams *v.* Dunseath, held that this limitation also applied where the fair rent of a holding was being fixed under the Act of 1881, and that the right of a tenant to be exempted from rent on his own improvements was consequently qualified accordingly.

"77. Upon the whole, having given the matter careful consideration, your Committee see no other course open to them than to recommend that improvements of whatever character made by the tenant should be exempted from rent, and that the limitation as to enjoyment in the Act of 1870 be repealed. Unless this course be taken, your Committee believe that the deep seated and well-grounded dissatisfaction with the existing state of the law in Ireland will be intensified, and in the interests of the rights of property created by the occupiers, they believe that legislative remedy is urgently called for.

"78. Under the Scotch Crofters' Act, 1886 (49 & 50 Vict. c. 29), which gives to Highland tenants the right to have their rents fixed by a statutory tribunal, *all improvements may be taken into account* ' which, in the judgment of the Commission, shall add to the value of the holding to an incoming tenant.'

"79. On the question of procedure of the Land Commission in considering improvements, your Committee desire to express their entire concurrence in the recommendation made by the Select Committee of the House of Lords in 1882, presided over by Earl Cairns, as to the practice of the Land Commission in valuing improvements, viz. (par. 6.) :—

"80. 'The Committee are of opinion that it is very important in the interest of the tenant, as well as the landlord, that the Assistant Commissioners, in fixing a judicial rent, should determine and record both the fair rent of the holding absolutely and also the sum which they find should be deducted from the rent in respect of the tenant's improvements. The knowledge of the rent assigned to the holding irrespective of improvements is necessary with a view to the settlement out of Court of disputes as to adjacent or similar holdings, and may be of much importance in questions as to the rental of the whole country, and the separate findings as to rental and improvements will greatly simplify appeals, inasmuch as both landlord and tenant may frequently be satisfied with the finding as to rental, and desire to appeal as to improvements only, or *vice versâ*.

"81. 'The Committee find that for some time after the formation of the Sub-Commissions the books issued to them for entering minutes of their orders contained two columns, headed 'Estimated value of Tenants' Improvements,' and 'Annual Sum deducted in respect of Tenants' Improvements from present Rent in fixing Judicial Rent.' These columns were not, however, filled up by the Assistant Commissioners, and have been latterly omitted from the order minute books. The Committee do not think that any sufficient cause has been shown why this information should not be required, at least as to holdings not subject to the Ulster custom, and they understand the Commissioners (although opposed to the information appearing) to be of opinion that the information should be given, and that it would be valuable.'

"82. This Report is dated the 18th April 1882, and their Lordships, in a further Report, dated the 9th July 1883, having heard further evidence, reiterate their opinion, as follows :—

"83. 'Complaint is also made that there is no sufficient record showing what improvements have been proved to have been made by the tenant, and have been allowed for as affecting the rent. . .

The

The Committee regret to find . . . that the form adopted by the Commissioners in order to meet this complaint has proved useless, and they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made and preserved a distinct specification of the improvements established by the evidence of the value assigned to them in the settlement of rent.

"84. In his evidence before the Lords' Committee, on the 25th April 1892, Mr. Justice O'Hagan objected to this information being given, as appears from Questions 3713 to 3715, stating, in reply to Lord Cairns, that it would create more discontent than it would allay, and in reply to the Marquis of Salisbury, that there were reasons of policy against it. Nevertheless the recommendation referred to was made, and Mr. Justice Bewley, who has succeeded Mr. Justice O'Hagan as Judicial Commissioner, informed your Committee that if they reported to a like effect the Land Commission would now undertake to carry out the recommendation.

"85. Your Committee, therefore, recommend that the forms in use by the Land Commissioners should be so framed as to show the total value of the improvements made by the tenant, or his predecessor in title, the deduction made therefrom for enjoyment, compensation, contribution, deterioration, or any other cause, and the net allowance made to the tenant for improvements under Section 8, Sub-section 9, of the Act of 1881.

"86. Lord Cowper's language on this head is confirmed by the evidence taken by your Committee:—

"87. 'With one or two exceptions, he distinctly stated that until very recently landlords did not make improvements on the land, and when the tenants made them the rents were immediately raised. He attributed the present condition of Ireland to the fact that the landlord class in Ireland, who in other respects were a most admirable race of men, had in many instances been undoubtedly bad landlords. The future hope of the country lay in protecting the tenants in the possession of their improvements.' Hansard, 22nd April 1887.

"88. When subsequently challenged in the House of Lords on this expression of opinion, Lord Cowper said:—

"89. 'He did not believe that improvements, as a rule, were made by the landlords; that they were, in fact, usually made by the tenants, and the only plan was to encourage tenants to make improvements and to protect such improvements when made. He qualified his remarks by saying "until recently" one could count on one's fingers the Irish estates on which improvements were made by the landlords. . . He thought he was justified in saying that, as a rule, improvements had been made in Ireland by the tenant, and in many cases the rent had been raised upon such improvements.' Lord Cowper, 2nd May 1887.

"90. It may be added that the conversion of the landlord into a position analogous to that of a rent charger makes it less and less likely that he will expend money in improvements; and makes it more important than ever that in a country mainly dependent on farming, and where, therefore, the improvement of the land is of the very highest moment to the community, the improving farmer should receive all the protection and encouragement that the law is able to bestow.

"91. On the question of presumption as to the making of improvements, the fifth section of the Act of 1870 enacts that they shall be deemed to have been effected by the tenant, but the exceptions are so numerous that the provision is of little value, and your Committee recommend that the exceptions should be repealed, and that, until the contrary is proved, all improvements be deemed to have been made by the tenant or his predecessors in title. Similarly, holdings in Ulster should be deemed subject to the Ulster custom, until the contrary is established. At present, except in the small number of cases in which the limited presumption created by the Act of 1870 operates, the tenant is always liable to be placed at a disadvantage by having to prove his improvements by the evidence of someone actually present when they were effected, a thing in many cases impossible, or at least very difficult, for him to do, especially in cases where the improvements are of old date, or where the holding has come into his possession by purchase. Owing to such difficulties of proof valuable improvements are liable to be lost to tenants, and rent imposed on them as if they were the landlord's property. Section 8, Sub-section 4, of the Act of 1881 enables the Court to disallow a fair-rent application if satisfied that the permanent improvements have been made and substantially maintained by the landlord, and this provision amply safeguards an improving owner, but it is abundantly clear that it is the practice in Ireland for the tenant to make the improvements, and, therefore, the presumption of law should lie accordingly.

"92. In the limited number of cases in which improvements are either executed by the landlord or allowed for by him in the rent, a record of the fact is almost invariably kept in the estate books, so that no difficulty of proof arises. In the Act of 1870 provision was made to enable a tenant to register his improvements in the County Court, but the procedure was a somewhat cumbrous and expensive one, and especially since the passing of the Act of 1881 has been almost never availed of. Your Committee recommend that when, on the hearing of a fair-rent application, improvements are proved to have been made by a tenant, the record of this fact by the Court should be made evident in subsequent proceedings, in the same manner as if the procedure under the Act of 1870 had been adopted.

"County Court Procedure.

County Court Judges.

"93. The number of cases heard in County Courts is comparatively small, and the practice is not always uniform. In the County Court system only one valuer goes upon the land, and he is not moreover, as the lay Assistant Commissioner is, a member of the Court, with a voice in its decision; he has merely a consultative position; he is paid by the day and not by salary. One County Court Judge informed the Committee that as the Judge knows nothing of the facts himself, and has no other mode of arriving at a conclusion as to the value of the land than by adopting the Court valuer's opinion, he, for his part, always felt himself morally bound to accept the valuation of the Court valuer.

9030 to 9032.

11440.

"94. Another County Court Judge, however, assured the Committee that he always applied his own mind to the facts before him, and gave his decision as an act of his own independent judgment. It is difficult to see why a Judge of a County Court should not be as capable of conducting these inquiries efficiently as a legal Assistant Commissioner.

"95. Your Committee observe with regret the delay and inconvenience caused by the transfers *ex parte*, on the application of the landlord, of fair-rent applications from the County Courts to the Sub-Commissions. Your Committee recommend that such transfers should not be allowed, except for cause assigned, and with restrictions on proceeding for the old rent in the interval, because, if the landlord is dissatisfied with the adjudication of the County Court Judge, an appeal lies to the Land Commission, the costs of which, if the landlord is successful, the tenant will have to pay.

"Costs.

Costs.

362, 368, 1400, 3633.

"96. Costs are undoubtedly heavy in proportion to the matter in question. It was stated that where there is no appeal the costs are often between 3*l.* and 4*l.* On the 294,000 cases the reductions amount to 1,250,000*l.* Taking the average reduction as 4*l.* to each tenant, a year of the benefit gained was swallowed up by the cost of the action.

588 to 593.

"97. Figures were put in showing that, where there is an appeal from the Assistant Commissioners to the Chief Court, in cases where the rent does not exceed 5*l.* the cost could hardly be less than 2*l.*, and might be more than twice that amount, and Mr. Commissioner FitzGerald stated that costs undoubtedly bear 'extremely heavily' in small cases. Your Committee are of opinion that, as in cases of appeal, costs should follow the event.

"True Value, Specified Value, and Free Sale.

Section 1.
True value.

"98. By the Land Act of 1881 it is enacted that the tenant for the time being of every holding not specially excepted from the provisions of the Act, 'may sell his tenancy for the best 'price that can be got for the same,' subject to regulations set forth in the section.

Sub-section 2.
Sub-section 3.

"99. One of these regulations requires the tenant to 'give the prescribed notice to his 'landlord of his intention to sell his tenancy,' and another directs that 'on receiving such notice 'the landlord may purchase the tenancy for such sum as may be agreed upon,' or in the event of disagreement, may 'be ascertained by the Court to be the true value thereof.'

Section 8.
Sub-section 5.
Specified value.

"100. It is also provided that on the occasion of any application to the Court to fix a judicial rent the landlord and tenant may agree to fix, or in case of dispute the Court may fix, 'a specified 'value for the tenancy,' and where such value has been fixed, then, if the tenant during the statutory term gives notice of his intention to sell the tenancy, the landlord is entitled to purchase it for the amount so fixed, subject to addition of the value of improvements afterwards made by the tenant, and to deduction in respect of subsequent dilapidation of buildings and deterioration of soil. Holdings subject to the Ulster custom are exempted from the provision as to 'specified value,' and with regard to 'true value,' the tenants of such holdings are allowed by law the option of selling their tenancies either under the custom or usage or under Section 1 of the Act. In case of sale under Section 1 the landlord would be entitled to buy the tenancy at the 'true value' agreed upon, or, in the event of disagreement, ascertained by the Court. But it appears that the Ulster custom tenant does not avail himself of this option, preferring to sell his tenancy in pursuance of the custom, and thus to avoid the exercise of a right of pre-emption by the landlord. It follows that, except in the case of a holding subject to the Ulster custom, the landlord may apply to the Court, when a fair rent is being fixed, to fix also a specified value at which he may purchase the tenancy whenever the tenant wants to sell it; and, whether or not the holding is one in respect of which a fair rent can be fixed, the landlord, on receiving notice from the tenant of his intention to sell the tenancy, may buy it, if no 'specified value' has previously been fixed, 'at what may be ascertained by the Court to be the true value thereof.'

Specified value excluded by Ulster custom.
Section 1. Sub-section 89.
Custom tenant may sell under custom.
Effect of provisions as to true and specified value.

"101. The Act provides, as has been pointed out, that either the specified value or the true value of a tenancy may be fixed by agreement between the tenant and the landlord.

Agreements not made.

"102. It has not been shown, however, in the course of this inquiry that any such agreement is ever made, neither does the question ever arise at the instance of the tenant.

"103. According

"103. According to Mr. Doyle, a legal Assistant Commissioner, who has filled that office almost from the passing of the Act of 1881, the value of a tenancy is settled by 'rule of thumb,' no principle is recognised. Indeed, Mr. Doyle declares that he does not know of any principle upon which any value can be put upon a tenancy other than the value of improvements belonging to the tenant. Other Assistant Commissioners examined before us have not gone quite so far as Mr. Doyle. But they agree in regarding as their most difficult function the fixing of the value of a tenancy. Apparently they discharge the duty, as a rule, with great reluctance. They even refuse to fix the 'specified value,' justifying their refusal on the ground that no adequate evidence was submitted. But under the statute it appears that they cannot refuse to fix the 'true value' when the tenant is about to quit the holding, although we should suppose that the evidence in a case of application to fix 'true value,' there being no other question before the Court, would be probably more meagre, and, therefore, more unsatisfactory than the evidence available in a case of 'specified value,' where, as the fixing of a fair rent is a portion of the case, there is testimony forthcoming at least as to the value of the holding. Whatever may be the evidence taken, the result appears to be that when the value is fixed, it is fixed without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got for the same. Whether, by the fixing of 'specified value,' the landlord is enabled to buy the tenancy at a future time, or by the ascertainment of 'true value' he is empowered to purchase it at once, in either case the price to be paid is substantially less than the real market value of what the tenant has to sell. When the landlord acquires the tenancy at the price so fixed there is nothing to prevent him, in the case of a present tenancy, from immediately re-selling at the full market value, subject to the fair rent payable by the former tenant, and even in the case where a present tenancy existed in the holding, the landlord, as the law now stands, will have it in his power, after the 22nd of August 1896 that is, after the lapse of fifteen years from the passing of the Act of 1881, to re-sell the tenancy at the full market value, and likewise to fix the amount of the future rent.

No principle recognised.

Difficulty in fixing value.

Refusal to fix specified value.

True value fixed.

Value fixed lower than market price.

Landlord may re-sell at market value.

Section 20. Sub-section 3.

"104. From a Paper handed in by Mr. Justice Bewley, showing seven cases in which the 'true value' fixed by Sub-Commission or County Courts was substantially increased on appeal, it appears that the average 'true value' fixed by the subordinate courts was less than five years' purchase of the rent, and that it was increased on appeal by the Land Commission to six and a-half years' purchase. A further Paper, also handed in by Mr. Justice Bewley, gives a return of all cases from the passing of the Act of 1881 to the 31st March last in which the Sub-Commission Court or County Court made an Order on an application to fix the true value of a tenancy, and the Land Commission re-heard the application on appeal. Omitting the cases in which the decisions of the Court of first instance and of the Land Commission afford no basis for comparison as to value, we find that in 12 cases which arose in Ulster, the value fixed in the subordinate Courts was, on the average, 10 years' purchase of the rent, and by the Land Commission, about nine years' purchase; and in 12 cases out of Ulster, the lower courts awarded on the average six and a-half years' purchase of the rent, which was reduced to an average of about six years' purchase on appeal to the Land Commission.

Illustrations of "true value."

App. 81.

App. 16.

App. 12.

Sales of tenancies.

"105. Another Paper, which has been handed in by Mr. Toler Garvey, land agent, shows the results as stated by land agents in reply to a circular issued by the Irish Landlords' Convention of the sales of over 3,000 tenancies throughout the country from 1882 to the present time. This return discloses the significant fact that in Ulster, where free sale prevails to the general exclusion of the right of pre-emption, the average price of tenancies was 16·8 years' purchase of judicial and non-judicial rents combined, whilst in Leinster it was only 6·1 years' purchase, in Connaught 10·2 years' purchase, and in Munster 10 years' purchase. From these results we think it must be inferred that the market value of tenancies where no right of pre-emption exists is far higher than 'true value' or 'specified value,' fixed by the Courts; and that where the right of pre-emption does exist throughout Leinster, Munster, and Connaught, the market value of the tenancy is thereby greatly depressed, because the person who buys a tenancy is liable to have 'specified value' or 'true value' afterwards fixed by the Court at the instance of the landlord. As improvements are stimulated in Ulster by the security of the right of free sale, so they must be checked in all other parts of Ireland by the right of pre-emption, for the tenant is not so likely to make improvements when he may be compelled to sell them with his tenancy for a price fixed arbitrarily by a Court, acting on no definite principle, as when he knows he can sell the tenancy, including the improvements, for the best price offered in the market.

Effect of pre-emption on free sale.

Improvements checked by existence of right of pre-emption.

"106. Such consequences, repugnant to equity and opposed to good policy, do not, in the opinion of your Committee accord with the object which Parliament had in view in enacting the free sale provisions of the Act of 1881.

"107. Your Committee recommend that by the repeal of the provisions of the Act relating to 'true value' and 'specified value,' the Courts be relieved of a function which in the latter case they are unable as well as unwilling to discharge (having no principle whatever laid down to guide them), and that the declaration of the Act of 1881, that every tenant may sell his tenancy for the best price that can be got for the same be thus rendered effectual.

Repeal of pre-emption provisions recommended.

"PROCEDURE.

"108. Your Committee now pass on to various other questions and suggestions that seem to call for the attention of Parliament.

Nature of statutory term.

"109. The Committee have had the advantage of hearing explanations from Lord Justice FitzGibbon and Mr. Justice Bewley on the nature of the statutory term created by the Act of 1881.

FitzGibbon, 3427.

"110. The Lord Justice set forth his views in the following words: 'The rent is fixed for '15 years, and it goes on until it is altered; it cannot be altered during 15 years, but the tenancy 'continues and cannot be determined. After 15 years the rent is capable of revision; but if it is

3428.

'not revised I suppose it goes on as before. It is not a 15 years' lease; it is a lease for ever, an 'undeterminable tenancy from year to year, with power to fix or to vary the rent every 15 years.'

Bewley, 10173.

"111. The view, however, advanced by Mr. Justice Bewley does not seem entirely to coincide. He quotes from the Judgment of the Irish Master of the Rolls, these words: 'All that the Land 'Act does is by negative words to impose on the landlord a disability to raise the rent or put out

10184.

'the tenant during the term;' and then adds, 'I have no doubt whatever that that is the true legal 'position.' And again he says, 'If the tenant wants . . . to retain security of tenure, there is 'nothing in the Act to give it him unless he acquires a new statutory term.' He also considers it a

10177.

'moot point' whether, at the expiry of the statutory term, the fair rent goes on or the old rent revives. It is obviously most undesirable that doubt once disclosed on so important a matter should continue. Your Committee consider that Lord Justice FitzGibbon correctly interprets the intention of Parliament, and it should be made clear by legislative enactment that at the end of the statutory term the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until the former judicial rent shall have been revised.

Length of statutory term. Heard, 9567. Doyle, 6921. Neligan, 11527. Garvin, 11944. Neligan, 11535.

"112. The statutory or judicial term is at present 15 years. There was a pretty general consensus of opinion among the witnesses that the term is too long, for the reason that it is impossible to foresee so far the fluctuation in prices which largely affects the fairness of a rent. The periods suggested range from five years upwards. Two witnesses only opposed any change, on the ground that a short term tends to unsettle the tenant's mind. It should be noticed, however, that of those who propose to shorten the term, Mr. Neligan, who, as a member of the Cowper Commission, recommended a term of five years, did so, on the assumption that it would be possible to arrange an automatic process for fixing rents. Mr. Neligan now suggests 10 years.

"113. The Committee are of opinion that a term of 10 years would be reasonable and convenient.

Limited administration, 964.

"114. On one question, which judicial decision might any day raise to importance, the law was stated to be in a doubtful and unsatisfactory state. If a tenant dies intestate, and legal representation has not been taken out, it is described as being the common practice of landlords and agents to give receipts for rent to the person in occupation, describing the money as paid by 'the representatives of A.B.,' the deceased tenant. It has been the practice, both of the Land Commission and of Sub-Commissions, under the Statute of 1881, to make an order appointing the widow or child who shall have served an originating notice a limited administrator of the deceased tenant, for the purpose of the proceedings. A judgment of the Court of Exchequer has thrown doubt on the power of the Land Commission to exercise this jurisdiction, on the hearing of a fair rent application. So long as this doubt has not been set at rest by legislation, the Courts may possibly require, in all cases of this kind, that the applicant shall obtain letters of administration from the Probate Division before the originating notice to fix a fair rent could be served, and this necessity would obviously cause both delay and expense.

Turbary. Bailey, 711. 1255-1262. 2113, 2681. Cunningham, 5084. 4515. 4512-4518. 4748. 4831. MacAfee, 5814. O'Keeffe, 6194.

"115. Having regard to the evidence adduced on the subject of turbary, to the effect that if the landlord tries to sever the turbary from the holding, the Commissioners have no power to give the turbary to the tenant, so that the tenant is sometimes compelled to pay back for turf as much as he has gained by reduction of rent (2113), and taking into consideration that in many parts turf is a necessity of life, and that oppressive rent is sometimes charged for the privilege of cutting turf, your Committee are of opinion that when the turbary is outside the ambit of the holding, the Commissioners should have power in cases where the tenant has hitherto been allowed to cut turf to secure the right to the tenant such terms as they may think fit. The same power might be granted with respect to all easements enjoyed with the holding.

Reporting. 1775. 8430 to 8445.

"116. The arrangements for reporting or recording the decision of the Land Commission have been extremely inadequate, so that many cases of enormous importance, both to landlord and tenant, are entirely without judgment being accessible.

"117. One legal Assistant Commissioner stated that sometimes six months elapsed before the judgments of the higher courts are available for the guidance of the Assistant Commissioners, and that generally in this respect, though no other branch of law can be practically so important to the

10096 to 10105.

people of the country, the absence of regular provision for the supply of authorised reports of land cases places the Assistant Commissioners at great disadvantage.

"118. Mr. Justice Bewley expressed himself as quite satisfied with the present system of reporting judgments, but he agreed that it would be very useful to have a barrister's authenticated reports, at all events of leading cases and to supply them to the Assistant Commissioners.

Consolidation.

"119. One legal witness expressed an opinion that it would be very desirable to consolidate all the Land Statutes from 1860 down to the present time in one code, simplifying, so far as possible, the cross references and artificial definitions of the present Acts.

"120. In

"120. In view of Lord Justice FitzGibbon's description of the existing difficulty arising from the incorporation of several complex and intricate Statutes, if you read a clause in any Act, as he said, you must keep every clause in every other Act in your mind at the same time; and of the mass of undigested legal decisions, your Committee are of opinion that opportunity should be taken as soon as feasible of including all the legal rules as to the hiring of land in one consistent and intelligible Act, which besides being complete in itself should, in the language of the late learned Professor Richey, 'be drawn up in such language, form, and manner, that the landlords and tenants 'in Ireland (or at least such of them as are reasonably educated) should, like the inhabitants of 'Continental Europe and America, be able, without professional assistance, to discover their respective 'rights and duties.' Richey's Irish Land Laws, 1880, p. 113.

"121. In submitting this Report, with the Minutes of Proceedings and Evidence taken before them, your Committee beg to express their opinion that it is highly desirable that they should be re-appointed in the next Session of Parliament, for further consideration of subjects connected with some of the above matters, as well as for the purpose of inquiring into the distribution of business among the departments of the Land Commission, and also into the working and administration of the Purchase Acts, neither of which subjects is comprised in their present Order of Reference."

DRAFT REPORT, proposed by Mr. *Brodrick*, read the first time, as follows :—

"1. YOUR Committee were appointed to inquire into and report upon the principles and practice of the Irish Land Commissioners and County Court Judges in carrying out the fair rent and free sale provisions of the Lands Acts of 1870, 1881, and 1887, and of the Redemption of Rent Act, 1891, and to suggest such improvements in law and practice as they might deem to be desirable.

"2. Your Committee have examined 16 witnesses, of whom two were members of the Chief Commission, three legal Assistant Commissioners, four lay Assistant Commissioners, two County Court Judges, and one assistant Lay Commissioner.

"3. Lord Justice FitzGibbon also attended, as representing the Court of Appeal in Ireland, and gave evidence before Your Committee. Mr. Toler Garvey and Mr. Barnes, whose evidence was only partially taken, were the only unofficial witnesses examined. Mr. Rochfort and Mr. Willis appeared to hand in certain returns.

"4. Your Committee desire to express their strong disapproval of the manner in which their sittings were brought to a close before certain important witnesses unconnected with the Land Commission, and whose evidence was tendered, could be examined. By this course your Committee were debarred from obtaining any adequate expression of opinion or suggestions from those who are suitors in the Land Commission Courts, or who practise before the Courts. They especially regret that the Chairman should have thought fit, by his deciding vote, to exclude this important branch of evidence, without the assistance of which it is impossible, in their opinion, to prepare and present a complete report within the terms of the Reference. It is further to be regretted that the inquiry was closed before certain essential returns which had been called for could be furnished.

"5. Despite the incompleteness of the information now before them, your Committee are satisfied that Parliament should be placed at once in possession of their views on two points :—

"(1). On the question of the status of the tenant on the expiration of a statutory term, your Committee have had the evidence of two Judges of the Supreme Court (one of them the chief of the Land Commission) that, whilst they are of opinion that upon the expiration of the statutory term the rent fixed by the Land Commission will be the rent payable by the tenant pending any application to the Court, the question is a moot one, and your Committee are of opinion that all doubts upon this point should be set at rest by a short Act, in accordance with the opinion expressed by such Judges. 3427. 10,177.

"(2.) With regard to the equally pressing matter of the method by which a revision of judicial rent at the expiration of a statutory term should, when desired, be carried out, your Committee regret that, as the evidence, with the two exceptions, has come entirely from officials, they have to rely on opinions which are naturally influenced in favour of the existing system.

"6. Several modifications of the latter have been suggested, but none of them have been supported with such a consensus of opinion as would lead your Committee to believe that their adoption would either give general satisfaction, materially diminish litigation, or be preferable to the present system, with the existing right of appeal to either party on questions of value as well as of law. 10,247–57. 1295. 3633–5. 4176–7. 4582. 8039. 6836–45. 8043.

"7. Your Committee hold that the procedure provided by Form No. 74 of the Land Commission Rules, by which the parties have an opportunity of agreeing to come to terms on the valuation of an official or independent valuer, may, if generally known, be largely availed of in any revision of rent on holdings where a judicial rent has once been fixed.

"8. As to the automatic revision of rents adopted by the Act of 1887, although it is true that the official witnesses were mainly unfavourable to this system, the two non-official witnesses examined gave 11,944–60. 12,368–70. 12,382–5.

gave evidence that caused your Committee to regret that the subject could not, by reason of the course adopted, be further investigated. Having regard to the fact that the system has been practically tested, the Committee think that a plan which would relieve the parties from the present expensive litigation is worthy of further consideration.

12,662-704. 12,819-27. 12,986-8.

" 9. A considerable amount of evidence was given as to the practice of the Commissioners in fixing a judicial rent. From this it appears that no instructions were at any time issued by the Chief Commission as to the principles upon which it should be determined. It is clear that there is no absolute uniformity in the practice of the Assistant Commissioners, though of late years there has been less divergency of method, partly owing to the more settled practice of the Chief Commission, and partly owing to the fuller acquaintance of the Assistant Commissioners with the principles upon which they individually act. The evidence goes to show that the judicial rent is not a competition rent, meaning by that expression the rent which the landlord might naturally expect to get in the open market, if he was letting the land in his own hands to a solvent tenant. The fair rent, as fixed by the Commissioners, was proved to be, speaking generally, 30 per cent. lower than the competition rent so defined.

2898. 3819. 5799. 6216-8. 6334. 7510. 7716-8. 7140-7. 11,084-8. 7513-14. 1477. 3818-24. 5790. 7930-3. 9231-3. 11,585. 11,591-5. 2756-8. 3811-14.

" 10. From this it is apparent that the Act has been construed in favour of the tenant in a manner entirely different from the intentions of the framers of the Act, as stated to the House by Mr. Attorney General Law: —' He now came to the question, How a fair rent was to be ascertained? What the clause meant was this: it meant to lay down that a fair rent was a competition rent minus the yearly value of the tenants' interest in the holding. That was what was intended, and anything else would be monstrously unjust. If his proposition was disputed he was quite ready to defend it.'—Law, Attorney General for Ireland. Hansard, Vol. 260, p. 1399.

3818-24. 5790. 7093-3. 4753. 7721.

" 11. In arriving at their conclusion the Assistant Commissioners have told us that they take into consideration the fact that the tenant is in occupation of his holding, its situation and convenience, its proximity to a town, market, or railway, the incidence of local taxation, the carrying powers of the land, and, in a general way, the question of prices. But your Committee are unable to say what proportion these elements bear in the practice of the several Assistant-Commissioners.

12,155-8. 12,909-13.

" 12. Instances were brought before your Committee in which, outside Ulster, after heavy reductions of rent had been made in certain holdings by the Commissioners, very large sums had been realised for the tenant-right. Your Committee would have been glad to hear further evidence on this point.

" 13. Your Committee have had to consider the methods in which the tenant's improvements have been treated by the Land Commission Courts in administering the Acts of 1881 and 1887.

" 14. The legal interpretation of the Act of 1881 upon this important point has been stated by Lord Chancellor Law, in the leading case of ' Adams and Dunseath,' as follows :

> " ' Improvements must be suitable and ameliorative to the holding, increasing thereby its letting value.
>
> " ' The improvement works are one thing, the increased letting value resulting therefrom another. The former, when executed by the tenant, are wholly his, and are to be completely protected and secured against confiscation, by rent or otherwise. The latter, namely, the increased letting value, or in other words, the development by the improvement works of the latent powers and capacities of the land, does not necessarily belong to the tenant. There are many cases in which it would be no more than a fair return for the tenant's outlay in effecting the improvement works; there are, on the other hand, cases in which, in the ascertainment of a fair rent, the landlord is justly entitled to have some share of the increased yearly value. The increased letting value is, therefore, to be dealt with as may, under all the circumstances of the case, be just and fair between the parties.'

" 15. When improvements are decided by the Court to have been made by the tenant and to have resulted in an increased letting value, the practice is in all cases in the first place to make such allowance in the rent as will give to the tenant a fair return for his outlay. In the few cases where this increased letting value is not wholly absorbed by such allowance the residue is distributed between the landlord and tenant by the Commissioners, as may appear to them to be just and fair, having regard to their respective interests. Evidence was given that the rate of interest usually allowed to the tenant was 5 per cent, but on some classes of improvements amounted to as much as 8, 10, and 12 per cent.

4499-502. 5474-6.

" 16. Mr. Justice Bewley, and nearly all of the Assistant Commissioners, gave evidence to the effect that, in the majority of cases, after allowing the tenant full interest upon the improvement works, nothing in the shape of increased letting value remained to be allocated to either party; and that the question of such allocation was a mere academic one.

10214. 4773-8. 5136. 5487. 6836. 6944. 7751. 8139.

" 17. The above evidence would appear to show that there is no ground for the assumption that the tenants' improvements have been confiscated by the administration of the Acts of 1881 and 1887, or that they have not been sufficiently protected from the imposition of rent.

" 18. As

"18. As regards 'fair rents' fixed under the Redemption of Rent (Ireland) Act, 1891, it is necessary to observe that while the principle of exempting tenants' improvements under the Act of 1881 has been held to apply to the case of long leaseholds, it has been decided upon the construction of the Redemption of Rent Act, 1891, that in the case of Fee Farm Grants tenants are not entitled to claim this exemption.

"19. It is, however, to be remembered that the right to have a fair rent fixed under this Act is given as a penalty upon the landlord, in consequence of his refusing to sell the holding to the tenant, and does not arise until after such refusal.

"20. As regards the evidence given on the questions of presumption as to improvements, town parks, pasture holdings, demesne lands, sub-lettings and sub-division, tenancies under limited owners, eviction by title paramount, the landlord's right of pre-emption, the status of future tenants, the length of the statutory term, and the position and action of mortgagees of the landlord's estate, the exclusion of evidence has left your Committee unable to complete their Report or make any recommendations.

"21. The same observations apply to the various questions of procedure, both before the County Courts and the Land Commission, which were brought before your Committee.

"22. Your Committee desire to place on record their dissatisfaction that the evidence of Lord Justice FitzGibbon and Mr. Commissioner FitzGerald was not completed, and that the Registrar General, though repeatedly asked for, was not summoned."

Motion made, and Question proposed, That the Draft Report proposed by the Chairman be read a second time, paragraph by paragraph—(The *Chairman*).

Amendment proposed, to leave out the words "the Chairman," in order to insert the words "Mr. Brodrick."—(Mr. *Brodrick.*)

Question put, That the words "the Chairman" stand part of the Question.—The Committee divided :

Ayes, 8.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. M. Healy.	Mr. W. Kenny.
Mr. Leese.	Mr. Macartney.
Mr. Solicitor General.	Colonel Waring.
Mr. T. W. Russell.	
Mr. Sexton.	

Main question put, and *agreed to.*

Draft Report proposed by the *Chairman*, read a second time, paragraph by paragraph.

Paragraph 1, amended, and *agreed to.*

Paragraph 2, *agreed to.*

Paragraph 3, amended, and *agreed to.*

Paragraph 4, *agreed to.*

Paragraph 5, *postponed.*

Paragraphs 6—8, *agreed to.*

Paragraph 9, *postponed.*

Paragraph 10, *agreed to.*

Paragraphs 11—13, amended, and *agreed to.*

Paragraphs 14—15, *postponed.*

Paragraphs 16—18, *agreed to.*

Paragraph 19, amended, and *agreed to.*

Paragraph 20, *postponed.*

Paragraphs 21—23, *agreed to.*

Paragraphs 24—25, *postponed.*

Paragraphs 26—27, *agreed to.*

Paragraph 28, *postponed.*

Paragraph 29, amended, and *agreed to.*

Paragraphs 30—31, amended, and *agreed to.*

[Adjourned till To morrow, at Twelve o'clock.

Wednesday, 15*th August* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY, in the Chair.

Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. Dillon.	Mr. Fuller.
Mr. Sexton.	Mr. Clancy.
Mr. Leese.	

Letter from Mr. MacAfee read by the Chairman.

Paragraph 32, amended, and *agreed to.*

Paragraphs 33– 34, *agreed to.*

Paragraphs 35—36, amended, and *agreed to.*

Paragraphs 37—39, *agreed to.*

Paragraph 40, postponed.

Paragraphs 41—44, amended, and *agreed to.*

Paragraphs 45—46, postponed.

Paragraph 46*, amended, and *agreed to.*

Paragraph 47, *disagreed to.*

[Adjourned till To-morrow, at Twelve o'clock.

Thursday, 16*th August* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY, in the Chair.

Mr. T. W. Russell.	Mr. Dillon.
Mr. Sexton.	Mr. Leese.
Mr. Clancy.	Mr. Fuller.
Mr. T. M. Healy.	

Paragraph 48, amended, and *agreed to.*

Paragraph 49, *agreed to.*

Paragraphs 50—53, amended, and *agreed to.*

Paragraph 54, *agreed to.*

Paragraphs 55—56, amended, and *agreed to.*

Paragraphs 57—60, *agreed to.*

Paragraph 61, amended, and *agreed to.*

Paragraph 62, *agreed to.*

Paragraphs 63—65, amended, and *agreed to.*

Paragraph 66, *agreed to.*

Paragraphs 67—68, amended, and *agreed to.*

Paragraph 69, postponed.

Paragraphs 70—71, amended, and *agreed to.*

Paragraph 72, amended, and *agreed to.*

[Adjourned till To-morrow, at Eleven o'clock.

Friday, 17th August 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY, in the Chair.

Mr. Solicitor General.	Mr. Fuller.
Mr. T. W. Russell.	Mr. Clancy.
Mr. Sexton.	Mr. Dillon.
Mr. Healy.	

Paragraphs 73—74, amended, and *agreed to.*

Paragraph 75, *disagreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"Your Committee have carefully considered the direction of the Act of 1881, that no rent should be allowed in respect of the tenant's improvements; also the decision in Adams *v.* Dunseath, rendering the tenant liable to rent in respect of a portion of the value resulting from his improvements; and the practice of the Sub-Commission Courts, which, according to the weight of evidence before us, allows the landlord rent in respect of the whole of the improved value, except so much as is given to the tenant for interest on his outlay. The intention of the Legislature has not, in the opinion of your Committee, been carried into effect by the Judgment in Adams *v.* Dunseath, and it seems to have been defeated in the practice of the Courts in fixing rents. It is of great and urgent importance that the law on this subject should be made unquestionably clear. Agricultural improvements are of vital consequence to the welfare of Ireland, and it is certain, from experience, as well as from the effects of the Act of 1881 upon the interests of landlord and tenant, that the tenant alone is willing to make improvements, or will in future make them. The public interest, therefore, demands that he should be encouraged by being secured in the enjoyment of the value resulting from his expenditure and labour. In making improvements, he incurs a certain risk of loss. It often happens that the cost is not nearly repaid by the result. The usual case appears to be that the increased value is only sufficient to yield a bare return for the outlay. When, by exceptional success, a more considerable value results, which never would be created except by the tenant's exertions, he is liable to be charged an increased rent in consequence, and this is not encouraging, but the reverse. The effect of the creation of a Statutory term being to let the land, including its capacity, to the tenant, in perpetuity, there appears to be no reasonable and no intelligible cause for denying to the tenant the full enjoyment of any improvement in his holding produced by the expenditure of his capital or the application of his labour. The interference of Parliament is required in order to ascertain and secure to the tenant his right to the improved letting value which has been elicited by his improvements."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Paragraph 76, amended, and *agreed to.*

Paragraph 77, amended, and *agreed to.*

Paragraph 78, *disagreed to.*

Paragraphs 79—84, *agreed to.*

Paragraph 85, *postponed.*

Paragraph 86, amended, and *agreed to.*

Paragraphs 87—89, *agreed to.*

Paragraph 90, *disagreed to.*

Paragraphs 91—92, amended, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"The gross amount of rental dealt with under all the fair-rent provisions of the several Acts, since the passing of the Act of 1881, is 6,140,602*l.*, and the Land Commission report that this total has been reduced under these provisions by 1,279,475*l.*, or 20·8 per cent."—(Mr. *Sexton*). Reductions under Acts.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"It is believed that agricultural rents in England, where the tenant generally makes no improvements, and possesses no legal property in the holding, have undergone much heavier reductions within the same period, by voluntary action of the landlords."—(Mr. *Sexton.*) Voluntary reductions in England.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Fair rent undefined.

"The Act of 1881, in directing that the Court, on the application of the tenant of a holding, or of the landlord, or both, might determine 'the fair rent to be paid by such tenant to the landlord for the holding,' laid down no principle, or rule, or method of valuation, to guide the Court in fixing the amount of the rent. The only instructions bearing upon this fundamental matter in any definite sense are set forth in Section 8 of the Act, and they direct the Court, (1) to 'have regard to the interest of the landlord and tenant respectively,' and, (2) that 'no rent is to be allowed or made payable,' in respect of improvements made by the tenant, and for which he had not been paid or otherwise compensated by the landlord."—(Mr. *Sexton.*)

Section 8. Sub-section 1, Sub-section 9

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

No fixed principle or settled mode of valuation.

"No subsequent Statute has touched the subject of the principle of a fair rent. No mode of valuation has been prescribed either by Parliament or otherwise, and it appears that the interest of the tenant, to which the Court is to have regard in fixing the amount of the rent, has never been made the subject of a direct judicial pronouncement, either by the Court of Appeal or by the Land Commission, or even by any County or Sub-Commission Court. Consequently, of necessity, each individual administrator acts absolutely according to his own opinion of what may have been intended, and there is neither a common understanding of the law, nor anything approaching to uniformity in practice."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Interest of the tenant not defined.

"Whilst the interest of the tenant still continues undefined, the direction that 'no rent is to be allowed or made payable in respect of the tenant's improvements' was subjected to judicial interpretation soon after the passing of the Act. The Land Commission interpreted the direction to mean that all letting value resulting from the tenant's improvements was to be excluded from consideration in fixing the fair rent, but the Court of Appeal (in Adams *v.* Dunseath, referred to more particularly in another part of this Report) held, by a majority of the judges, that the direction of the Act not to allow any rent in respect of the tenant's improvements must be taken to mean, not what the language of the Act conveys to the ordinary mind, but something different and much more complex—namely, that the tenant is entitled to an annual percentage of indefinite amount in his outlay in making the improvement; but that any remainder of letting value due to his improvement, after the percentage on outlay has been allowed to him, is to be divided between him and the landlord, according to the judicial discretion of the Land Commission, having regard to the interest of the landlord and the tenant respectively."—(Mr. *Sexton.*)

Adams *v.* Dunseath.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Rulings in Adams *v.* Dunseath.

"This remarkable judgment, reversing the law as laid down by the Land Commission in the same case, and formulating a complicated rule of law on apportionment of the value of the tenant's improvements, which, according to the apparent meaning of the words of the Act, was not to be apportioned, at the same time presented two conclusions so clearly as to render it difficult to realise that their meaning could be mistaken. The tenant was to have allowance upon his outlay, but so far from being limited by the judgment to this allowance, he was declared entitled to a share of any remainder of letting value resulting from his outlay. And his right to the additional share was declared to be attributable to the legal interest of the tenant in the holding apart from his improvements."—(Mr. *Sexton.*)

Q. 10209.

Question, That this paragraph be inserted in the Report—put, and *agreed to.*

[Adjourned till To-morrow, at Eleven o'clock.

Saturday, 18*th August* 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Fuller.
Mr. Solicitor General.	Mr. Clancy.
Mr. Sexton.	Mr. T. M. Healy.
Mr. Dillon.	

Amendment proposed, That the following new paragraph be inserted in the Report:—

This judgment, delivered in 1882, has been the law since then, and is now the law, and during the interim of 12 years has been binding upon all administrators of the Land Acts. But your Committee have learned with extreme surprise, from a majority of the official witnesses, including the three legal Assistant Commissioners who were examined, Mr. Bailey, B.L., Mr. Doyle, B.L., and Mr. Greer; also two lay Assistant Commissioners, as well as the County Court Judge of Kerry, and Mr. Heard, a County Court valuer, that the practice is to give to the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements in the soil. As to the interest of the tenant, which, according to the Court of Appeal, entitles him to a further share in the value of his improvements beyond the mere interest on his outlay, the evidence of these witnesses is plainly to the effect that what they understand by the interest of the tenant is simply a right to the percentage on his outlay upon improvements. This conclusion is confirmed by their testimony that they fix a fair rent to be paid by the present tenant at what a solvent tenant desiring to become a tenant of the holding could fairly pay from year to year. That is to say, they fix the rent at what might be paid by a person having no interest in the holding, and take no account in measuring the fair rent of the present tenant's statutory interest."—(Mr. *Sexton.*)

Not followed by Sub-Commission.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:—

"The County Court Judge of Cork, examined at the close of the Inquiry, gave evidence on this question which shows a practice on his part different from that pursued by his own Court valuer and by the County Court Judge of Kerry. Two or three lay Assistant Commissioners gave evidence that they allow the tenant a share in the value of improvements in the soil beyond the interest in his outlay, and also that they allow for the occupation right in fixing the amount of the fair rent; but these are questions of law as well as of value. The legal Assistant Commissioners, according to the evidence, lay down the law in their several courts; your Committee examined three of the four legal Assistant Commissioners, and they agreed that the practice is to give the tenant, in respect of his improvements in the soil, a percentage on his outlay, and nothing more, and to fix the fair rent, without taking into account his occupation interest. Your Committee are quite unable to understand, and no witness has attempted to explain, how it was possible for some Assistant Commissioners to give only the percentage on outlay, and not to allow for the occupation interest in the rent, whilst others, in the same courts, gave a share beyond the percentage and allowed for the occupation right; and how this contrariety of practice could continue for twelve years, without any dissent between the Assistant Commissioners valuing in such different modes, without any ruling of the law by the legal Assistant Commissioners, without any evidence or argument in the Court or any of them, and without a solitary appeal on the subject out of over forty thousand appeals lodged with the Land Commission."—(Mr. *Sexton.*)

Qy. Occupancy right. Contradiction.

(Qy.)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:—

"Your Committee can come to no other conclusion than that the general practice of the Sub-Commission Courts has been, and is, to deny to the tenant that share in the value of his improvements to which the Court of Appeal, in Adams *v.* Dunseath, declared him to be entitled, and to leave out of account, in fixing the fair rent, that interest of the tenant to which the Statute expressly directed the Courts to have regard, and the operative force of which the Court of Appeal explicitly affirmed."—(Mr. *Sexton.*)

Conclusion.

Amendment proposed, That the following new paragraph be inserted in the Report:—

"The Judicial Commissioner, Mr. Justice Bewley, on being examined, towards the conclusion of the inquiry, when the contradictions in the evidence of the Assistant Commissioners had challenged explanation, informed your Committee that the Land Commission do not instruct the Assistant-Commissioners, and do not consider that it is their function, or that they have any right to instruct the Assistant-Commissioners in the discharge of their duty. It is evident, however, in the state of facts disclosed, that effectual measures must be adopted without delay to secure both the observance

Evidence of Mr. Justice Bewley.

of the law and intelligent uniformity of practice. The learned Judge explained that the practice in his Court is to allow the tenant only the percentage on outlay in respect of his improvements; but that his occupation right is taken into account in fixing the fair rent, and that by this means the tenant receives his due share of the remainder of the value of his improvements, as part of his general interest in the holding. Mr. Justice Bewley held that this is in accord with the judgment in Adams *v.* Dunseath, and he produced a correspondence between himself and Lord Justice FitzGibbon, in which the Lord Justice appeared to convey a general assent to Mr. Justice Bewley's proposition. Your Committee have learned that the Court valuers of the Land Commission are not instructed to act in the particular mode described by Mr. Justice Bewley. His colleague, Mr. Commissioner Fitzgerald, Q.C., examined at the opening of the sittings of your Committee, gave an account of the method of fixing fair rents, but made no reference to the occupation right. Assuming that the Land Commission Court takes this right into account in reduction of the rent, and that the Sub-Commission Courts, as testified by their legal chairmen, fixed the rents without deduction in respect of the occupation right, your Committee confess their inability to understand how the rents brought up on appeal from the Sub-Commission Courts, amounting to 431,398*l.*, should not have been reduced, but increased to 432,680*l.* by the Court of the Land Commission. The intervention of Parliament is urgently required to define and protect "the interest of the tenant," and to secure coherent administration of the law."—(Mr. *Sexton*).

Legislation required.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"Your Committee have further to observe that the elaborate forms of report in use by Sub-Commissions and appeal valuers, and the less complicated forms used by the valuers to the County Courts, whilst they furnish many particulars of more or less interest to the parties, do not afford sufficient information directly bearing on the essential matter, which is, the fairness of the rent."—(Mr. *Sexton*).

Further particulars in fair rent cases.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Paragraph 93, *agreed to.*

Paragraphs 94—95, amended, and *agreed to.*

Paragraph 96, *agreed to.*

Paragraph 97, amended, and *agreed to.*

Paragraphs 98—106, *agreed to.*

Paragraph 107, amended, and *agreed to.*

Paragraphs 108—110, *agreed to.*

Paragraphs 111—112, amended, and *agreed to.*

Paragraph 113, *amended.*

Another amendment proposed, at the end of the paragraph to add the following words: "and "having regard to the conclusions stated in Paragraph 19 of the Chairman's Draft Report, they "consider that it would be equitable to apply this abridgment of the period to existing statutory "terms."—(Mr. *Sexton.*)

Question, That those words be added to the paragraph.—The Committee divided:

Ayes, 3.	Noes 3.
Mr. Clancy.	Mr. Fuller.
Mr. Dillon.	Mr. T. W. Russell.
Mr. Sexton.	Mr. Solicitor General.

Whereupon the Chairman declared himself with the Noes.

Paragraph, as amended, *agreed to.*

Paragraph 114, *agreed to.*

Paragraph 115—117, amended, and *agreed to.*

Paragraph 118, *disagreed to.*

Paragraph 119, *agreed to.*

Paragraph 120, amended, and *agreed to.*

Paragraph 121.—Amendment proposed to leave out in line 3 all the words from the word "further" to the end of the paragraph, in order to add the following words:—"For the purpose of inquiring into the "working and administration of the Purchase Acts, the working of the Land Judge's Court, and "the distribution of business among the various departments of the Land Commission."—(Mr. *T. W. Russell.*)

Question,

Question, That the words proposed to be left out stand part of the paragraph,—put, and *negatived.*

Question, That the proposed words be there added, put.—The Committee divided :

Ayes, 4.	Noes, 2.
Mr. Dillon.	Mr. Clancy.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. T. W. Russell.	
Mr. Sexton.	

Question, That the paragraph, as amended, stand part of the Report, put.—The Committee divided :

Ayes, 4.	Noes, 2.
Mr. Dillon.	Mr. Clancy.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. T. W. Russell.	
Mr. Sexton.	

Postponed paragraph 5, amended, and *agreed to.*

Postponed paragraph 9, *disagreed to.*

Postponed paragraph 14, *agreed to.*

Postponed paragraph 15, amended, and *agreed to.*

Postponed paragraph 20, amended, and *agreed to.*

Postponed paragraph 24, amended, and *agreed to.*

Postponed paragraph 25, *amended.*

Question put, That the paragraph, as amended, stand part of the Report.—The Committee divided :

Ayes, 5.	Noes, 1.
Mr. Clancy.	Mr. T. W. Russell.
Mr. Dillon.	
Mr. T. M. Healy.	
Mr. Solicitor General.	
Mr. Sexton.	

Postponed paragraph 28, *amended.*

Another Amendment proposed, at the end of the paragraph, to add the following words :—

" Where the rent of the future tenant has not been increased since his tenancy began he is a tenant-at-will, and consequently liable to eviction at the pleasure of the landlord. Where his rent has been increased, the acceptance of the increase by him has created a statutory term, during the continuance of which he holds under the protection of the ordinary statutory conditions ; but, as soon as the term expires at the end of 15 years, he falls back into the condition of a tenant-at-will, with no security whatever against eviction. He cannot apply to have a fair-rent fixed, and he cannot acquire another statutory term, unless the landlord imposes and he accepts another increase of rent. The legal position of the tenant demands consideration "—(Mr. *Sexton*).

Question, That those words be there added,—put, and *agreed to.*

Postponed paragraph 28, as amended, *agreed to.*

Postponed paragraph 40, *disagreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report :—

" Tillage being now less profitable under the changed condition of agriculture, it is natural and conformable to the policy of these Acts that the limit of exclusion in pasture holdings should be raised. Mr. Justice Bewley suggested that this limit should be altered from 50*l.* to 100*l.* Your Committee, upon consideration, recommend that a limit of 200*l.* should be fixed, in substitution for that contained in Sub-section 3 of Section 58 of the Act of 1881. The provision of Sub-section 4 requiring residence should, of course, be retained. No holdings should be excluded unless a written instrument of letting had prohibited tillage or meadowing for sale, and the Court came to the conclusion that this prohibition was inserted *bonâ fide*, and not merely to effect an exclusion from the Land Acts. Dairy farms should not be excluded, whatever might be the valuation."—(The *Chairman.*)

Suggested limit of exclusion.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Postponed paragraph 45, amended, and *agreed to.*

Postponed paragraph 69.

Amendment proposed, at the end of the paragraph, to add the following words:—

"The question whether, by reason of the acceptance of a lease, improvements made by the tenant or his predecessors in title pass to the landlord, is not in a satisfactory position. Though the majority of the Court of Appeal held in Adams *v.* Dunseath that the landlord was entitled to rent on the house erected by the tenant's predecessor prior to the lease, the Land Commission in Walsh *v.* Limerick (23 I. L. T. R. 17) held under similar circumstances that the buildings remained the tenant's. Both decisions, however, were arrived at on the special facts of the case, but Mr. Justice Bewley, in answer to Questions 11,264 to 11,268, appeared inclined to think that the Land Commission might still be governed on this point by the view taken in Adams *v.* Dunseath. In the opinion of your Committee the law should be put beyond doubt that the acceptance of a lease does not vest the tenant's improvements in the landlord."—(Mr. *Healy.*)

Question, "That those words be there added,"—put, and *agreed to.*

Postponed paragraph, as amended, *agreed to.*

Postponed paragraph, 72, amended, and *agreed to.*

Postponed paragraph 85, *disagreed to.*

Amendment proposed, that the following new paragraph be inserted in the Report:—

"In order to secure that such information may be given, your Committee recommend that in future all valuations be so made and recorded as to show the estimated value of the gross produce of the holding; also the fair-rent to a solvent person desiring to become a tenant; the holding, including buildings, being valued as it stands as a going concern; the valuation also to show any deductions from such rent in respect of the occupancy right and the improvements of the present tenant, distinguishing between deductions of the letting value of tenants' buildings and of other improvements not affecting the capacity of the soil, and allowances for drainage and reclamation respectively; and in the latter cases showing the interest allowed on outlay and the apportionment of any remainder of the letting value due to the improvement."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:—

"While, according to the existing rules of the Land Commission, the tenant of any holding the valuation of which is over 10*l.*, must make out a schedule of the improvements for which he intends to claim to credit on the hearing of a fair-rent application, the landlord is under no corresponding obligation to give notice of any point of law which he intends to raise at such hearing. Your Committee see no reason why the landlord should not be obliged within a certain time after the service of the originating notice to fix a fair rent, to state all the grounds of his objection to such application, and they recommend that a rule to that effect be made by the Land Commission, and that a similar rule should apply to hearings in the Appeal Court."—(Mr. *Clancy.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:—

"Doubts having been expressed whether the legal status of a judicial tenant can be questioned on the application for a second statutory term, the attention of Parliament is called to this question, with the view to the prevention of needless litigation."—(Mr. *Healy.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Question, That this Report, as amended, be the Report of the Committee to the House,—put, and *agreed to.*

Ordered, To Report, together with the Minutes of Evidence and an Appendix.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

PAGE

Tuesday, 1st May 1894.

Mr. Commissioner Gerald Fitzgerald, Q.C. - - - - - - - - 1

Friday, 4th May 1894.

Mr. W. F. Bailey - - - - - - 27

Tuesday, 8th May 1894.

Mr. W. F. Bailey - - - - - - 53

Wednesday, 9th May 1894.

Mr. W. F. Bailey - - - - - - 76

Tuesday, 22nd May 1894.

Mr. W. F. Bailey - - - - - - 99

Friday, 25th May 1894.

Mr. W. F. Bailey - - - - - - 122
Mr. Lawrence Doyle - - - - 132

Tuesday, 29th May 1894.

The Right Hon. Gerald FitzGibbon, P.C. 136

Friday, 1st June 1894.

The Right Hon. Gerald FitzGibbon, P.C. 159
Mr. W. F. Bailey - - - - - - 180

Tuesday, 5th June 1894.

The Right Hon. Gerald FitzGibbon, P.C. 181

Friday, 8th June 1894.

Colonel E. R. Bayly - - - - 205

Tuesday, 12th June 1894.

Colonel E. R. Bayly - - - - 224
Mr. John Cunningham - - - - 242

Friday, 15th June 1894.

Mr. John Cunningham - - - - 247

Tuesday, 19th June 1894.

Mr. John Cunningham - - - - 269
Mr. Thomas MacAfee - - - - 284

Friday, 22nd June 1894.

Mr. Thomas MacAfee - - - - 294
Mr. Cornelius O'Keeffe - - - - 315

PAGE

Tuesday, 26th June 1894.

Mr. Cornelius O'Keeffe - - - - 319

Friday, 29th June 1894.

Mr. Cornelius O'Keeffe - - - - 342
Mr. Laurence Doyle - - - - 355

Tuesday, 3rd July 1894.

Mr. Laurence Doyle - - - - 364
Mr. Thomas Roberts - - - - 384

Friday, 6th July 1894.

Mr. Thomas Roberts - - - - 389
Mr. Edward Greer - - - - 401

Monday, 9th July 1894.

Mr. Edward Greer - - - 414

Tuesday, 10th July 1894.

Mr. James Johnston Shaw - - - 438

Friday, 13th July 1894.

Mr. Edward Heard - - - - 461

Monday, 16th July 1894.

Mr. Justice Bewley - - - - 487

Tuesday, 17th July 1894.

Mr. Justice Bewley - - - - 503

Friday, 20th July 1894.

Mr. Justice Bewley - - - - 521

Monday, 23rd July 1894.

Mr. Justice Bewley - - - - 543

Tuesday, 24th July 1894.

Mr. Justice Bewley - - - - 563

Friday, 27th July 1894.

Mr. John Chute Neligan - - - 585

Monday, 30th July 1894.

Mr. Toler R. Garvey - - - - 606

Tuesday, 31st July 1894.

Mr. Toler R. Garvey - - - - 628
Mr. William A. Barnes - - - - 645
Mr. Gilbert de L. Willis - - - - 651
Mr. William Rochfort - - - - 652

MINUTES OF EVIDENCE.

Tuesday, 1st May 1894.

MEMBERS PRESENT :

Mr. Brodrick.	Mr. Macartney.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. Robert Reid.
Mr. Fuller.	Mr. T. W. Russell.
Mr. T. M. Healy.	Mr. Sexton.
Mr. W. Kenny.	Colonel Waring.
Mr. Leese.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY, ESQ., IN THE CHAIR.

Mr. Commissioner GERALD FITZGERALD, Q.C., called in ; and Examined.

Chairman.

1. PERHAPS I ought to explain to you that the object of the Committee in asking you to come here to-day is to give us as plain and as straightforward an account as you can of the actual procedure adopted under the Land Acts. We do not want answers that would lead to discussions. If I may put it in that way, we want to have laid down what one of the Members of the Committee has called a ground plan of the actual course of an application from the time when the originating notice to have a fair rent fixed is served down to the end of the transaction. We shall, therefore, be glad if you will kindly bear that in mind in giving your answers. You have had a long contact with land questions and the administration of these Acts. Will you tell us what your career has been?—I was an Assistant Commissioner under the Land Act from November 1881 to November 1882.

2. Where were you?—I acted as such in Tyrone, Armagh, Wexford, Wicklow, Kilkenny, and Carlow.

3. Then you became a County Court judge?—I became a County Court judge in 1886.

4. Of which counties?—Of Roscommon and Sligo. I was subsequently transferred to Meath, Westmeath, Longford, and King's County.

5. Did you sit as judge in those counties on fair rent business?—I did. I had a very large amount of such business in Meath, Westmeath, Longford, and King's County; in fact, I think I had as many fair rent cases, if not more, than any other County Court judge during that time.

Chairman—continued.

6. "That time" was from 1886 to 1890?—From 1886 to 1890.

7. Then in 1890 you were made a Land Commissioner?—I was made a Land Commissioner in 1890.

8. What department have you had principally charge of?—Since March 1893, when the Land Commission became consolidated under the Act of 1891, I have had charge of the Fair Rent Department, that is so far as the arrangement of the Sub-Commissions, and the arrangement of the circuits, and the arrangement of the court valuers.

9. You distribute the business of the Sub-Commissions and the court valuers?—I distribute the business.

10. And you determine what Sub-Commissions shall take what circuits?—Yes.

11. Your experience has evidently been considerable. Now, will you tell us the course of the first proceedings to have a fair rent fixed?—The proceedings may be commenced either in the Civil Bill Court (that is the County Court), or in the Land Commission.

12. Then take the case of the Civil Bill Court?—If commenced in the Civil Bill Court, the party against whom the proceedings have been commenced has the right to have the proceedings transferred to the Lands Commission, unless it can be shown that such transfer is unjust.

13. What sort of cause is shown against transfer?—As a general rule, the cause shown

Chairman—continued.

against transfer is delay, which used to be very considerable two or three years ago, when there were, say, 40,000 or 50,000 outstanding cases before the Sub-Commissions, but the transfer was usually granted. In the order making the transfer, the tenant was secured against the consequences of the delay in this way, that the transfer was only granted upon the terms that the landlord took no proceedings against the tenant in reference to rent by way either of process or ejectment, until the fair rent was fixed, without the permission of the Land Commission.

14. Are the cases of application for transfer very numerous?—They are very considerable.

15. What sort of proportion?—I could not tell you at all; they are not a very large proportion, but they are numerous. They are commonly agreed to.

16. They are applications, I suppose, generally on the part of the landlord?—Yes, because the application to have a fair rent fixed is generally on the part of the tenant; I have known, though, applications on the part of the tenant.

17. Now then we will leave the County Courts for the moment and take the procedure before the Land Commission. What is the course of things there?—The proceedings are commenced and carried out by notices. There are no pleadings in the Land Commission. The notice which originates the proceedings is called the originating notice, and it must be served as provided by the rules.

18. Rules are made by the Land Commission?—Rules are made by the Land Commission. The existing code of rules dates from 1883, so far as fair rent cases are concerned. They have been sometimes altered, but I mean the main body of rules are those fixed in 1883.

19. Then on whom is this originating notice served?—It is served upon the landlord or his agent.

20. Served upon the landlord or his agent, and also on the Commission, is it not?—It is also lodged with the Commission. Here are the forms of the various originating notices.

21. Will you put them in, please?—Yes. (*The documents were handed in.*)

22. What comes then, after the service of the notice?—As soon as the notice has been lodged and served upon the Land Commission the case is considered to be in Court.

23. And is entered in the books of the Court?—The notices received by the Land Commission are entered in their county case books; and the notices in each case are made up in a file to which the orders and the reports of Assistant Commissioners and Valuers, and the maps made in the case are subsequently attached. The file is the record of the proceedings. Each case has its own file, and the file is deposited, after the proceedings are over, in the Record Department. We have a record room (I mean a fire-proof room) where we keep all our files.

24. Then comes, I suppose, the hearing of the case?—Then comes the hearing of the case. The fair rent cases are delegated to a Sub-Commission for hearing. Each Sub-Commission at present consists of a legal chairman and three pairs of lay or Agricultural Commissioners and a Deputy Registrar. The latter is an official who goes about with them.

Chairman—continued.

25. Then each chairman works with three pairs of lay Sub-Commissioners?—At present. It has been changed from time to time. At first, when the Land Commission was started, each chairman had only one pair of lay Assistant Commissioners. Then it was changed to having two pairs in December 1881; then it went on to have three pairs, and it went up to four pairs; they have been from time to time altered. I will hand in a Return showing the various changes from the very commencement.

26. We should like to have that; you have the forms of delegation, have you not?—Yes, I have the forms of delegation.

27. You will put them in?—Yes. Here are the forms of "Delegation." (*The documents were handed in.*)

28. Now you say there are three in the Sub-Commission?—Three pairs since last December?—There were four up to last December.

29. What is the area of the operation of a Sub-Commission?—Oh, it varies altogether.

30. But they have special districts allotted to them, have they not?—They have districts; but the districts are from time to time altered according to the circumstances of the cases; according to the number and distance of the cases.

31. How are the districts settled?—There is no special rule.

32. I mean they are settled in the Land Commission?—They are settled in the Land Commission by office regulation.

33. And they are altered, I suppose, according to the kind of business and the distance?—Exactly. This will show the districts at present. Here is a circuit list showing the districts at present (*handing in the same*).

34. What sort of order does the legal chairman sit with his laymen?—He sits alternately with each pair of his laymen. Of course at the commencement of a circuit, or of a new sitting, for example, after the vacation, he can only sit with one pair on the first day, and the other two pairs sit without him, but they have instructions not to take any case which is of any legal importance in his absence. I can produce to you the instructions sent to the Lay Commissioners. We sent instructions to them to the effect that if there was any case in which any question of law really arose they were to hold that over for the arrival of the chairman, or the presence of the chairman.

35. Then, we understand that two pairs of Lay Commissioners are constantly sitting without their legal chairman?—Oh, not constantly; no, certainly not, but merely at the commencement of the sitting. Suppose, for example, that I arranged a sitting to commence on the 12th September—after the summer vacation—then the legal chairman has three pairs; he can only be in one place on the 12th September; he sits there for a couple of days, then he moves on to sit with his other pair; but in order not to waste time they have to sit for a day or two without him. That is the only occasion on which they sit without him.

36. Then

Chairman—continued.

36. Then I suppose the cases for hearing are drawn up in lists?—The cases for hearing are drawn up in lists in order of priority.

37. The priority of the originating notice?—Here is a large quantity of lists (*exhibiting a bundle*) if you would like to see a list.

38. Oh, no, we do not wish to see those. How are the lists made up?—The lists are made up in order of priority with this exception—that if there are cases for some special reason like the winding-up of an estate in Chancery, or cases in which ejectments are pending, or anything in that way, we give them precedence and put them on the list so that the tenant may have the opportunity to have his rent fixed before proceedings can be taken against him.

39. The lists are made up according to Poor Law Unions, are they not?—Yes.

40. Does a Commission sit in each Poor Law Union?—As a general rule, yes.

41. But I suppose in electoral divisions there are sub-divisions of a union?—There is a certain amount of discretion left to them—according to the best disposal of the public time—to go according to Electoral Division or Poor Law Union, if one place compared with another would be a waste of time.

42. These lists are sent from the Land Commissioners to the solicitor of the landlord, or the agents of the landlord and the tenants?—Yes; we send those, they go as a notice of trial. The list provides that a certain number of cases at the commencement of the sittings shall be taken at a certain place and at a certain time, and satisfactory arrangements are made by the Sub-Commission as soon as they see how the cases are being disposed of.

43. There is full notice given to the parties?—There is about three weeks' notice, as such.

44. Cases are heard, I presume, in the order in which they are in the list, unless there is special reason to the contrary?—Certainly—yes.

45. Then the evidence is taken in the ordinary way in which evidence is taken in Courts of Justice; it is sworn evidence, is it not?—The evidence is taken in the ordinary way in which evidence is taken in Courts of Justice.

46. Is it evidence on oath?—It is evidence on oath, and parties appear personally or by solicitor or counsel.

47. Then about the tenants' improvements—where does he specify the claim under that head if he makes any?—If his valuation is not under 10*l.* a year he endorses it on the back of his originating notice; he is bound to specify the particulars of his improvements there; even if he does not do that, if he serves a notice a reasonable time before the hearing, he will not be excluded.

48. Even though he had not put them on the back of his notice?—Yes, even though he had not put them on the back of his notice, if he served the landlord within a reasonable time before the hearing.

49. I think the Committee would be rather glad to see a specimen put in of those claims for improvements?—Here is one for example where it was not specified on the originating notice, but subsequently served. The tenant omitted to put the improvements on the back of his originating notice (*handing in the file containing the document*).

50. Then that is the hearing of the case by a Sub-Commission; these proceedings constitute the hearing of the case?—*That* is the hearing.

51. After the hearing what happens?—After the hearing the holdings are inspected by the two lay Assistant Commissioners, who have previously given notice of the time of their visit to the parties.

52. What do they do upon inspection?—They make a thorough valuation of the holding, and they mark the holding upon the sheets of the Ordnance map which are sent down to them with the files of the Land Commission. They not merely mark the boundaries of the holding but they mark the various classes of land according to the classification in the form of report.

53. As to this classification, who establishes that?—The classification and form of the reports have been from time to time altered, but the one that is at present in use has been in use since, I think, March 1893, and I can hand you in specimens of all the forms of reports which have been in use since the very commencement of the Land Commission.

54. What kind of heads of classification do you adopt?—I have here the classification at present in use: first-class grass land; second-class grass land; third-class grass land; fourth-class grass land; fifth-class mountain and unreclaimed bog. First-class permanent meadow; second-class permanent meadow. First-class tillage; second-class tillage; third-class tillage; fourth-class reclaimed mountain or bog, and then "waste."

55. How many sub-heads are there? there are a good many, are not there; how many classes?—Twelve.

56. Very well, they mark on their report then, the class of land to which the holding belongs, or what various classes it may contain?—Yes.

57. What else on the report do you show? Do they show whether they have treated buildings, for instance, as belonging to the landlord, or the tenant?—Certainly.

58. They show that?—Certainly.

59. Do they show whether any per-centage of the rent has been fixed with reference to the proximity of the holding to a town, for example?—Certainly.

60. They show whether they have added something to their estimate of the rent in consequence of proximity to a town?—Certainly; that is shown.

61. Perhaps the Committee would like to hear you a little more distinctly state how they enter the share the buildings have had in their estimate?—The usual course of valuation in Ireland is this, to treat the buildings as separate from improvements on the land. That is the usual course adopted by all valuers in Ireland. They value the land as if it had no buildings; then if the buildings belong to the tenant no rent is placed upon them—no rent is added; if, on the other hand, the buildings belong to the landlord,

Chairman—continued.

an addition to the rent of the land is made so far as the buildings have increased the letting value of the farm.

62. Is that in every case?—That is in every case.

63. And this is entered in their report?—That is entered in their report—how much they place upon buildings if they belong to the landlord; if they belong to the tenant, nothing is placed upon them.

Mr. *T. W. Russell.*

64. Is that true under the Redemption of Rent Act?—Oh, certainly. Of course in cases that come under fee farm grants a tenant is rented upon the buildings.

65. Under the fee farm part of the Redemption Act?—Yes.

66. Then it is not the case "in every case," as you stated just now. In the case of fee farm grants under the Redemption Act the tenant is rented on the buildings?—He is rented on the buildings and his improvements; there is no doubt about that.

Chairman.

67. What you are now speaking of (a member of the Committee desires to be clear upon that) is this: you are now speaking of a report sent in by the Sub-Commissioners?—A report sent in by the Sub-Commissioners.

68. They always put upon the report whether they have included buildings—apart from the land—for the purpose of raising, or lowering, the rent—in their estimation of the rent?—Certainly.

Mr. *T. M. Healy.*

69. "Always." Since what year?—As long as I recollect.

70. These papers are only issued to the Sub-Commissioners in recent years; they were not on the original programme?—You are quite right there; in the earlier stages of the Commission there were no reports. I have here a set of the forms of the reports which have been made by the Sub-Commissioners since the very start of the Commission. At the first there were no reports; then a very short report was introduced, and that from time to time has been modified, until now we have the present form.

71. The present elaborate report that they have to fill up?—Yes.

Chairman.

72. The present report contains fuller particulars than the earlier report?—It contains fuller particulars than the earlier report. We selected a Sub-Committee of Sub-Commissioners of experience and they fixed the form of the report.

Mr. *Hayes Fisher.*

73. Can we have the dates of these?—I can give you a Return giving you specimens of all the reports and the dates at which they were introduced.

Chairman.

74. Now these reports contain, first of all what you have told us about buildings; second, whether proximity to a town has been an element in the Commissioners' estimate; third, classification of the land, the various classes of land of which the holding is composed; do they say anything about improvements other than buildings?—Oh, yes; any improvements that have been allowed to the tenant, improvements proved in Court are stated. Here is the heading: "Improvements proved in Court (excluding buildings), whether made by landlord or tenant which are at present a *bonâ fide* benefit and suitable to the holding, and are found to exist on inspection, to be stated in detail."

Mr. *Dillon.*

75. I understand this is the report which is before the Court?—No, the usual course is this: the Sub-Commissioners and their legal chairman hear the evidence in Court, then subsequent to that the lay Commissioners visit the holding.

Chairman.

76. They, first of all, have the hearing in Court, then they go and inspect the land, then they make the report, of which you are now speaking, to the Commissioners?—Yes.

Mr. *T. W. Russell.*

77. As to the improvements other than buildings; you were just in the middle of that?—"Improvements proved in Court and found to exist." Then there is another heading in the report, the actual improvements allowed. For example: supposing they found improvements existing on the holding which were proved in Court, but which, under some legal decision, they were unable to exempt from rent, they would put those in the first entry, but they would not appear in the actual improvements which had been exempted from rent.

Mr. *W. Kenny.*

78. Are these reports open to the public?—Certainly; on payment of a shilling you can get a copy of any report.

79. Can the landlord get a copy of the paper we see here?—Certainly.

Chairman.

80. There is one rather important particular I should like to ask about: Does this report show what proportion of the increased letting value, created in the soil by the improvements made by the tenant, has been allowed by way of reduction to the tenant?—No, it does not.

81. It does not state that?—It does not state that.

82. They do not state whether, in taking the increased letting value into consideration, they have done that on the principle of allowing all, or only a certain proportion of that increased letting value to the tenant. I mean this: We assume that our increased letting value has been given to a holding by the tenant's improvements; they do not state whether they have made any allowance for that, or what proportion of such increased letting value they have given the

tenant

Chairman—continued.

tenant who, so to say, created it?—No, they do not state that.

83. That is not in the report?—No.

84. Nor do they say whether they have gone on the principle of giving a fixed percentage; they say nothing about it, in fact?—They say nothing about it; they merely state the improvement they have allowed for.

85. Very well, so much for reports, then. Have you got with you a series of reports of this kind?—Yes.

86. We should like a fair number of them put in?—Do you mean a series of reports actually filled up?

87. Yes?—Those are the originals that you have there.

Mr. *Sexton.*

88. We want a series selected so as to show the different class of circumstances dealt with by the reports?—I have a few here, a very few.

Chairman.

89. Enough to give the Committee a comprehensive idea of what these reports are?—I have a few files here, I mean files of proceedings, to which you would find the reports attached.

90. I think we ought to have the reports by themselves, because of course these are very important documents in our inquiry?—Yes.

Mr. *Sexton.*

91. A selected series which would exhibit the principles on which the Sub-Commissioners deal with various classes of holdings, with regard especially to the value of improvements of the land?—I do not think any of the reports would show you what the deduction has been on account of the improvements.

Chairman.

92. We want to see exactly what they are?—Yes.

93. Then the decisions are afterwards announced, I suppose, in open court by the Chairman?—Announced in open court by the Chairman. Owing to the arrangements of the Sub-Commission, it becomes sometimes necessary to deliver the decision at a distance from where the case was heard. The deputy registrar sends a post-card to the agent of the landlord and of the tenant notifying the decision, but the decision is formally announced in open court, and also a scheduled decision is posted on the court-house where the case has been heard.

94. Then, in answer to Mr. Kenny, you said that either party could obtain from the Land Commission a certified copy of the report on the payment of a fee of 1*s.*?—On payment of a fee of 1*s.*

95. And also, I think, a tracing of the map of the holding for a small fee?—Yes.

96. What sort of fee?—I do not quite exactly know; but it varies from five to six or seven shillings, according to the work done.

97. That ends the transaction so far as the Sub-Commissioners are concerned?—That ends it. They then return their files to Dublin.

98. How do the parties stand after this decision has been announced; is there any right of appeal?—Either party has two months within which he

Chairman—continued.

can require his case to be re-heard before the Commissioners.

99. Within two months either party may require his case to be re-heard before the Commissioners; is there any check upon frivolous requests of that kind?—No; except that there is a 10*s.* stamp on the notice of appeal, but that has not operated much as a check.

100. In a very small holding even do you charge 10*s.*?—No; not under 10*l.*

101. You mean that in the case of holdings under 10*l.* you exempt from that?—They are exempt; yes.

102. When a party appeals, he states upon his notice the grounds of his appeal?—Yes; he ought to state in his notice the grounds of his appeal, that is to say whether he appeals on a question of value, the rent fixed to be either reduced or increased, or whether he appeals upon the ground that the holding is excluded from the Act, or that the tenant has not the necessary status; but this rule, although it is an extremely convenient one for the purpose of practice, we have always had doubts as to whether we had any right to impose it, whether it was *ultra vires.*

103. Those doubts have been confirmed by a decision of the Court, have not they?—They have been confirmed by the *dictum* of the Chief Baron (it was not a decision) in the case of Lord Rossmore and Dr. Donelly, where he said we had no right to impose such a rule, so what we do is this; if the party does not state the ground upon which he relies, and he suddenly raises this ground on the hearing of the appeal, if the other side are taken by surprise, we adjourn the case on terms as to costs, and give the other side an opportunity of preparing for the point.

104. The Chief Baron's *dictum* went to this, did it not, that the party had a right of appeal without stating any ground at all?—Yes, a general right to a re-hearing.

105. A general right of appeal. Now go to the stage of appeal; what is the course of things there?—In appeals, we endeavour, so far as practicable, to have each holding upon which a rent has been fixed, and in reference to which the appeal is taken, valued by two Court valuers before the hearing.

Mr. *T. W. Russell.*

106. By two?—By two, so far as we can at present, that is only within the last year. Occasionally it arises, through a press of business, that we cannot send two valuers, but the general body of appeals now pending have been valued by two Court valuers.

Mr. *Sexton.*

107. Do they value independently of each other?—No, together; they make a joint valuation, they go there together; as a general rule they agree as to the result, but I have known them to disagree.

Mr. *T. W. Russell.*

108. But it is a very common thing to have only one valuer on appeal, is it not?—Not now, not very common, not in the bulk of the cases. Of course, I am only talking of the last year.

 109. Then

Chairman.

109. Then the Commissioners go down into the district where the case is, and what do they do there?—We first issue lists of the Appeal sittings. We fix our sittings for Appeals at convenient parts of the country that will suit the cases; we then issue lists of the cases to be heard. We try, as far as possible, to issue them about six weeks beforehand—a preliminary list—and then very often a very large number of settlements occur owing to the results of the appeal valuations; then we issue a final list if possible about ten days before, and then go down and hear the cases on the list.

110. When you say "we," you and Mr. Justice Bewley always go, do not you?—Under the distribution of business between ourselves, Mr. Justice Bewley and I always sit in appeals, also one of the other Commissioners in rotation.

111. The number is three?—The number is three.

112. It is so by the statute, is it not; every appeal is heard by three Commissioners?—Unless one is unavoidably absent.

113. Can two hear appeals?—If the one is unavoidably absent two Commissioners can hear appeals, but in cases of appeals from the County Court the Judicial Commissioner must be a member of the Court.

114. Then you generally sit in the country one week, and in Dublin the alternate week, do not you, or is that no longer the practice?—That used to be our practice, but, owing to the cases getting very scattered—for example, at present there are very few cases in the Dublin district; they are nearly all in the country—we have to sit week after week in the country; we follow the cases as far as we can.

115. Then we go to the Court valuers. You say that as far as you can every holding which is subject to appeal is visited by two Court valuers, who report upon it?—Yes.

116. The Court valuers, as I understand, are Sub-Commissioners?—The Court valuers are Sub-Commissioners.

117. Who are told off for valuation purposes?—There are, I think, two who are acting Court valuers who have never acted as Sub-Commissioners; but all the others are Sub-Commissioners—mostly of considerable standing.

Mr. *T. W. Russell.*

118. These are appeal valuers?—These are appeal valuers.

119. That is the phrase used?—Yes, that is the phrase generally used.

Chairman.

120. You generally call these appeal valuers?—Yes, appeal valuers.

121. But they have no official title, as such, that would figure on the estimates—that is, as valuers apart from Sub-Commissioners?—I believe not.

122. Is an appeal valuer sometimes sent back to be an ordinary Sub-Commissioner?—Very often; I change them backwards and forwards.

123. Then the appeal valuers for inspecting the holdings; do they make a report?—They make a report.

Chairman—continued.

124. A report that is sent to each party?—No; the result of the report is sent to each party.

125. The result of the report?—The result of the report is sent to each party, and each party may then, on payment of a shilling, apply for and get a copy of the report.

126. What do you mean exactly by "the result of the report"; the rent?—Supposing that the rent fixed by the Sub-Commission was 40*l.*, and the appeal valuers fixed it at 30*l.*, a printed form would be sent to each party saying that 30*l.* was the rent fixed by the appeal valuers.

Mr. *Sexton.*

127. Do they always agree?—No; I have had in the last fortnight, I think, seven or eight cases in which they disagreed, and I thought it better to send down a third valuer; however, this does not often occur.

128. When they disagree, what result do you report to the persons interested?—We report both results, both the disagreement and each result.

Chairman.

129. You report the disagreement and the two figures?—The two figures, yes.

Mr. *T. W. Russell.*

130. Are the reports sent in by the appeal valuers on the same forms as those sent in by the Sub-Commissioners?—Not exactly; but I believe I have the forms here.

Chairman.

131. How would you describe the difference between the report of the Sub-Commissioners and the report of the appeal valuers?—Really there is no distinction in principle; you would have to compare the one with the other.

132. But surely it is very important, is it not; as one is a kind of check upon the other, is it not important they should be identical?——

Mr. *T. W. Russell.*

133. Is not the appeal a re-hearing of the case?—An appeal is a re-hearing of the case by statute. An appeal from a Sub-Commission is called a re-hearing by the statute; the appeals proper are appeals from a decision of the County Court.

134. We are speaking now of appeals from the Sub-Commission?—There is no practical difference between the two.

Chairman.

135. Is it not important, do not you think, that, that being so, the reports ought to be identical?—I think I may say they are very nearly identical. If you compare them you will see no substantial difference except so far as necessarily arises from the difference of position of valuers who have not heard the evidence and Sub-Commissioners who have heard it.

136. Why not altogether identical?—Well, I will tell you, for example, one reason. Take, with reference to improvements: The report of a Sub-Commission has two things which it shows on it; in the first place, the actual improvements on the holding which have been proved in Court; in

Chairman—continued.

in the second place, the improvements which can be legally exempted from rent. The Court valuers have nothing to say to that; they have merely to take the improvements as allowed by the Sub-Commission. They do not hear the evidence; they do not go into any legal question; they are not legal men; they merely deal with the improvements that have been allowed by a Sub-Commission, so far as they find them existing.

Mr. *T. W. Russell.*

137. Then have they the reports of the Sub-Commissioners with them?—Certainly; they have the whole file of the proceedings.

Mr. *Sexton.*

138. The original valuers are not legal men?—They are not legal men; but they fill up the report and fix the rent, with the assistance of their legal colleague. Their legal colleague hears the evidence with them; they then go out and inspect the holding; they then come back, and they and their legal colleague fill up what I may call the pink form.

139. But, so far as concerns any matter of the inquisition into agricultural value, the original valuers and the appeal valuers are not only on a parity, but they are the same people; they are both Sub-Commissioners?—Certainly.

140. Is there not something else, for the purpose of comparison, in allowing any difference in the form which you get in the second valuers' report?—So far as agricultural matters are concerned the two forms of report are practically the same.

Chairman.

141. Are they supposed to take the same point of view, the appeal valuers, as the Sub-Commissioners did in the first part of the proceedings; they examine the same conditions; they see what class of land the holding is composed of, and so on?—They do, certainly; they examine in the same way.

142. That is to say, they satisfy themselves on exactly the same facts, and they arrive at their conclusions in the same way, as the Sub-Commissioners?—Certainly; except that they have not heard the evidence given; that is the only difference.

Mr. *W. Kenny.*

143. As I understand, for the purpose of inspection, they take the place of lay Sub-Commissioners?—For the purpose of inspection they take the place of lay Sub-Commissioners, but they have not the means of conferring with any legal colleague.

Mr. *Sexton.*

144. Their legal colleague cannot alter any fact which they on examination of the farm have found?—No, certainly not; the appeal valuers have no legal colleague.

Mr. *W. Kenny.*

145. You, the Head Commissioners, I believe, do not inspect at all?—No; it would be absolutely impracticable if we were to hear cases all over Ireland.

Mr. *T. W. Russell.*

146. And would it not be correct to say that it would be no use if they did inspect?—Not much use, so far as I am concerned.

Chairman.

147. I think the Committee would like to know this: when you have the re-hearing down in the country, what is the course of the proceedings before you?—The course of the proceedings before us is this: the case is called on; in the case of a leasehold the particulars of the lease or the particulars of the tenure are given to us.

148. By sworn evidence, or by affidavit, or what?—There is generally no controversy. The lease is produced; then the tenant is called, and he gives what you may call the history of the holding. He states how long he has been in occupation of it; he states from whom he got it; how he got it; who were his predecessors, so far as he knows; what changes of rent he can prove, if any; he states the improvements that he made, and, so far as he can, any improvements made by any of his predecessors, and the various incidents of the holding; whether the approach is bad; whether there is a want of water; everything he likes connected with the holding.

149. He can appear by solicitor or by counsel?—He can appear by solicitor or by counsel.

150. Is he cross-examined?—He is cross-examined; yes.

151. By the landlord's solicitor or counsel?—By the landlord's solicitor or counsel.

152. Is the landlord called, or his agent?—If he chooses to give evidence; sometimes he is, sometimes he is not.

153. Do not you call him yourselves?—Oh, no; we merely take whatever evidence is offered to us. Then, after the tenant has been called, as a general rule, in ordinary cases the tenant's valuers are called, and they give their estimate of the value of the holding. Some valuers merely give their estimate of the land as it stands; they do not go into the question of improvements; others do. Then the landlord's case is gone into; sometimes the agent is called, sometimes the landlord is called; in the majority of cases neither, and they produce their evidence of valuation.

154. You first have the tenant's valuer, then you have the landlord's valuer?—Yes.

155. These valuers are not professional men, are they, for the most part?—Sometimes they are, and sometimes they are not.

156. Sometimes they are neighbours of the tenant?—Sometimes they are neighbours of the tenant, and sometimes they are professional valuers.

157. Has the profession of valuer sprung up since the Act of 1881?—Oh, very largely.

158. Then you have before you, whilst you are hearing these appeals, the report of your own appeal valuers?—We have the report of our own appeal valuers, and we have the report of the Sub-Commissioners.

159. Then, after all this, you decide?—Then, after all this, in the country we generally spend our evenings going over the cases we have heard during the day; because we announce the decisions, if possible, the next morning; we find that convenient.

Chairman—continued.

160. You announce the decision in open court?—We announce the decision in open court, at the sitting of the court, except in cases in which we have to deal with questions of legal difficulty, and other questions.

Mr. *Hayes Fisher.*

161. Is the report of the valuers a detailed report of the Sub-Commissioners, or does it more or less sum up the details?—It is practically independent of the report of the Sub-Commissioners.

Mr. *Sexton.*

162. How many valuations have you before you when you are considering an appeal?—In ordinary cases we have the two joint valuations.

163. Altogether, I mean?—We have, at all events, one on the part of the appellant, always; we require that. Then we have the valuation of the two appeal valuers; then we have the valuation of the two Sub-Commissioners, as far as it appears in their pink report, and sometimes the party who is appealed against does not give any evidence of value.

164. There may be about five valuations?—There may be about five valuations sometimes, and sometimes more; eight or nine.

Chairman.

165. Eight or nine valuations?—I think I ought also to state that, in appeal cases, in addition to the report, we generally have in court the field book of the appeal valuers, or one of them. That shows the value per acre they have put on the holding. It also shows the deduction, if any, they have made for improvement. We have that for our own private reference in court.

166. The actual deduction they have made for improvements?—Yes.

167. The parties never see these field books?—No; they are not produced in evidence. We have them on the bench there for our own information. I have one or two of those note-books here, if you would wish to see them.

168. I think we would like to see them, if you will hand them round the table; you need not put them in?—I have only one, I understand, Mr. Cunningham's.

Mr. *W. Kenny.*

169. Are the appeal valuers chosen exclusively now from Sub-Commissioners?—No; there are two at present working who never acted as Sub-Commissioners.

Chairman.

170. Who are these two?—Mr. Moroney and Mr. Benjamin Roberts. Mr. Benjamin Roberts is a Sub-Commissioner, but he never acted as a Sub-Commissioner proper.

171. I did not know that. I thought they were always interchangeable, the Sub-Commissioners and the court valuers?—So they are; they hold their appointments as Sub-Commissioners, but, as a matter of fact, neither Mr. Roberts nor Mr. Moroney ever acted on a Sub-Commission.

Mr. *W. Kenny.*

172. But they are permanent officials of the Land Commission?—Mr. Moroney is not, Mr. Roberts is.

Mr. *Sexton.*

173. As I understand, this private note-book is the only document in your proceedings that states what part of the improvements existing upon the holding are not rented?—I mean, the reports state the improvement exempted from rent; the note-book states the actual allowance that has been made.

174. Exactly; the actual allowance that has been made, and this is the only document that shows it?—That is the only document that shows it.

175. The parties do not know it?—The parties do not know it. Well, I am wrong in that in some ways, because there are some Sub-Commissioners who place on the face of their reports the amount they have deducted for improvements; it is not the usual course; but there are one or two who always place on their reports the amount. I think that Mr. O'Shaughnessy, in any report drawn up by him, states the deduction he has made for improvements.

176. Deduction for what?—From the fair letting value of the land as it stands.

Mr. *T. M. Healy.*

177. It is sometimes done by request, is it not?—Possibly.

Chairman.

178. There is still one more possibility; there may be an appeal from you?—There may be an appeal to the Court of Appeal in Ireland from our decisions.

179. You determine, I suppose, whether an appeal shall lie or not?—We have to give liberty to appeal. The appeal is a full appeal on facts and law if it is given.

180. An appeal on facts and on law?—On facts and on law; yes.

181. I suppose by "facts" you mean the value?—No; there is no appeal on any question of value.

182. On no question of value?—No. We also have power to state a case on a pure question of law.

183. Then you give leave for an appeal?—Yes.

184. It is taken before the Court of Appeal. What is the evidence before the Court of Appeal?—We have an official shorthand writer, and upon his notes of the evidence the appeal goes.

185. And that is the whole material submitted to the Court of Appeal?—And the documents which have been proved in the case; the documents and the files of the court.

186. Then the Court of Appeal have never heard the evidence nor the witnesses?—No; that is a disadvantage they labour under. They have not seen the witnesses nor heard the evidence.

187. Besides the general right of appeal, is there a right to have a case stated for the Court of Appeal?—There is a right to have a case stated upon any question of law unless the Land Commission certify that the application is frivolous.

188. There is no appeal, I think, from the Irish Court of Appeal to the House of Lords?—Oh, no.

Chairman—continued.

189. It is final?—There is no such appeal in any Land Commission cases.

190. Upon any part of this is there an appeal to the House of Lords?—No; there is no appeal to the House of Lords.

191. The decision of the Irish Court of Appeal is final?—The House of Lords did make a very valuable decision under the Land Acts; it arose in an Irish case of ejectment, and by that means it reached the House of Lords.

192. It had nothing to do with fair rent then?—No, it was a question of a pasture holding.

193. As to whether they ought to be excluded, do you mean?—As to the meaning of the words "let to be used wholly or mainly for the purpose of pasture." There was a question as to whether that meant a contract to be let wholly or mainly for the purpose of pasture, or whether you could show the purpose of the letting independently of the contract; and the House of Lords decided that you could show the purpose of the letting independently of the contract. That is the case of Westropp *v.* Elligott, IX. Appeal Cases.

194. Now we will go back to the County Court proceedings. We have taken you through the proceedings of the application to have a fair rent fixed by the Land Commission. Now, we will go to the County Court Judges. What are the proceedings there?—In the County Courts the proceedings are commenced in the same way as in the Land Commission, by the originating notice.

195. Which is served upon the other party, and upon notice given to the Judge, the County Court Judge?—No; notice is deposited with the Clerk of the Peace and in the County Court Offices and then, under the Land Act of 1887, the Land Commission are empowered to nominate, with the sanction of the Lord Lieutenant, independent valuers; to any one of whom the County Court Judge can refer any matter for report.

196. Were these valuers nominated as each case arose, or is there a body of them?—There is a body of them. I have the list here, which has been added to from time to time. A great number that are still on the list (the names appear on the list) are unavailable, some are dead, and some have taken official appointments; but there is the list.

197. Is that a list sanctioned, by the Lord Lieutenant, of valuers whom the County Court Judges can resort to when they want their services?—Yes.

198. And these are commonly called, as Mr. Russell says, Court valuers?—County Court valuers.

Mr. *T. M. Healy.*

199. Since May 1887?—Since May 1887. Previously to that, my own personal practice was this; I had a Court valuer, and I had to collect his fees in Court from the parties.

Chairman.

200. Then we may take it that every County Court Judge now employs a valuer to report upon the holding coming before him for the purpose of fair rents?—I think so.

201. Do the County Court Judges hear the evidence first in the way the Sub-Commissioners do, before sending out the valuers?—So far as I know their practice, their practice varies. When I I was a County Court Judge myself my practice was that as soon as the originating notice was served on the Clerk of the Peace, he had directions from me to transmit it to my Court valuer, who immediately inspected the holding, and had instructions to note any improvements. Then the case came on at the next Sessions before me for hearing. I had the County Court valuer in Court, of whom I could ask any questions, and I there and then heard evidence, and read his report, and fixed the rent in Court. It was a very quick way of getting through the business, and for that reason, I think, the parties rather liked it; but some of the County Court Judges, I think, hear the evidence first, and then have the holdings inspected, and announce their decision at a subsequent Sessions.

202. The County Court valuers are paid by the Treasury?—The County Court valuers are paid by the Treasury for the actual days they are employed.

203. Does this business go on pretty expeditiously in the County Courts; have you heard something of irregularities taking place?—Well, the technical work, so far as the drawing up of orders, and notifying them to the Land Commissioner, is done extremely badly.

204. Done extremely badly?—In the very, very worst manner. I mean, for example, supposing a case is dismissed as being a town park, the order is drawn up as dismissed, because it is not within the Act, and we cannot tell the reason that it is dismissed. I mean they take no trouble about their orders.

205. You mean the orders are made out in a slovenly way?—In a very slovenly way by the Clerks of the Peace.

206. Oh, it is the Clerk of the Peace who makes out the orders?—Yes.

207. Is not that rather the fault of the County Court Judge?—The County Court Judge has so many orders to sign that he signs them on the responsibility of the Clerk of the Peace.

Mr. *Sexton.*

208. Have you not remonstrated with him?—We have recently. I have a letter we sent to the Lord Chancellor about it, and I think it has been attended to. Here is the letter that was sent by Mr. Justice Bewley to the present Lord Chancellor.

209. Is it a short letter or a long one?—It is a fairly long letter dealing with the whole way in which the Clerks of the Peace have been doing their business. (*The letter was handed in.*)

Mr. *T. W. Russell.*

210. In the case of an appeal from a County Court Judge's decision how do you manage when there is no cause book, but a simple record of the case being dismissed as outside the Act?—We hear the evidence. On one or two occasions appeals have come to us where we could not get any order at all. In the south of Ireland there has been unfortunately a Court-house burnt (in Cork) and it is absolutely impossible to ask for any document there at all; every document that ever existed is said to have been burnt in this fire.

Mr. *W. Kenny.*

211. I just want to know how the lease cases under the Act of 1887 are dealt with; do any of those come to the County Court Judge, or are they all reserved for the Commission?—He has exactly the same jurisdiction as the Land Commission.

212. As a matter of fact do they go to him?—Certainly, just as much as other cases.

Chairman.

213. Perhaps you will give us, if you can, the figures showing the respective quantity of business that goes into the Land Commission, into the Civil Bill Courts, and thirdly, the number of agreements (voluntary agreements) between landlord and tenant, that are filed either in the County Courts, or in the Land Commission; say you begin by telling us all the fair rents fixed under the Act of 1881 down to the 31st March. Your report, I believe, is not yet out?—No, we are getting it out as fast as we can. I think we will be able to get it out in about a week or so.

214. You can give us the figures from a proof, I dare say?—The total number of cases disposed of I will give you.

215. Fair rent cases?—The number of fair rent cases from August 1881 to the 31st March, 1894, is 354,890. The entire number of rents fixed by all methods from the passing of the Land Act, 1881, to the 31st March, 1894, was 294,654.

216. Does that include agreements filed or rents fixed?—That includes agreements filed; 121,902 agreements filed.

217. Then the number of rents fixed either by the County Court Judges or by the Land Commissioners is your larger figure less the 121,000?—294,654 less the 121,902.

218. It would be 294,654 less 121,000?—Yes. Then the number of cases struck out, withdrawn, or dismissed are 60,234.

219. I do not quite understand what is the difference between being "struck out" and being dismissed"?—Oh, there is very considerable difference.

220. "Withdrawn," of course, is the action of the parties?—"Withdrawn" is where the parties have settled out of Court, or where they have purchased.

Mr. *Sexton.*

221. What is "struck out"?—"Struck out" is where the parties do not attend, which very often arise from the same course, that they have settled out of Court and do not attend.

Colonel *Waring.*

222. And do not give notice that they have done so?—No, they do not give any notice; they do not appear at all.

Mr. *W. Kenny.*

223. That will cover cases of agreement?—That will cover cases of agreement.

Colonel *Waring.*

224. Those agreements will appear in your other history, the 121,902?—We could not identify them.

225. You could not identify them, but they would be there?—Yes, certainly.

Chairman.

226. Now, would you tell us the amount of the old rents dealt with in this 294,654?—Well, the mention I made with reference to the 60,000 would give a very erroneous idea. That 60,234 cases would include the cases struck out, withdrawn, or dismissed, and cannot be taken as in any way representing the number of holdings excluded from the Act. We have not got, and I do not think we could make up, with great accuracy, a table showing the cases dismissed as separated from the cases struck out and withdrawn, and the causes of dismissal, because the orders were not very carefully drawn in the earlier days of the Land Commission, and are still not carefully drawn by the County Courts; but in order just to test it, I got a return made out of the cases which were struck out, withdrawn, or dismissed during the last year. I have that return. There are 1,600. I cannot put my hand on it at the present moment, but I will hand it in to you.

227. What do you want to show; what were your figures, if you had them to show?—During last year 1,626 cases were struck out, I think, withdrawn, or dismissed; of that number 1,300 cases were struck out and withdrawn, so that out of that 1,626 there would be only 326 that can, by any possibility, have been excluded from the Act on account of the nature of the holding.

Mr. *T. W. Russell.*

228. On this point, might I ask you, will you be in a position to-day to hand in a list of the exemptions from the Act; that is, the classes of tenancies that are entirely excluded from the Act. Can you do that, do you think?—Do you mean the numbers.

229. No; the class of cases?—I can read them to you.

230. I mean by legal decisions?—Yes.

Mr. *Sexton.*

231. "Dismissed" means that there was no case?—"Dismissed" means that there was no case, but it does not necessarily mean that it was dismissed as excluded from the Statute. The tenant may not have been in occupation; he may have sublet part of his holding; he may have subsequently got rid of the sub-lease and been in a position to bring on the case again.

232. It means excluded by Statute, does it?—For the moment, that either his holding is one to which the Act does not apply, or that he has not the necessary *status* as tenant at the time he applies.

Chairman.

233. Then what was the old rent of those 294,000 cases?—£6,140,602.

234. To what figure was that reduced?—To 4,861,805*l.*

235. What is the percentage, taking the gross total?—20·8.

236. Now could you give us the percentage of the reduction, we will say in five-year terms. What was the percentage of reduction from 1881 to 1886, and from 1886 to 1891?—I do not think I can give you that.

237. Or any periods you like, so long as we see whether there has been any considerable alteration?

Chairman—continued.

alteration?—I think I have a return showing the reduction in each year in the rents fixed by the Chief Commission and Sub-Commissions.

238. From 1881 to 1886, and from 1886 to 1891, the percentage of those five-year periods?—Yes.

239. It may be the years as well, but we want the summaries of these five-year periods?—I have now returns up to last year, by each year.

240. I think it will be more convenient if you will get them summarised, and give us that (as Mr. Macartney wishes to have it); let us have the five-year period?—Will I mention a few figures?

241. Yes, if you like. There are only percentages?—There are only percentages of reduction, and only include rents fixed by the Chief Commission and Sub-Commissions, and do not deal with rents fixed by the County Courts, or rents fixed by agreements. In the first year, on the 22nd August 1882, the percentage was 20·5; next year, 1883, 19·5; next year to August 1884 it was 18·7; in the next year to August 1885 it was 18·1; in the next year to 1886 it was 24·1; to the 22nd August 1887, 31·3; to August 1888, 28·3, for yearly tenancies, and 29·6 for leasehold tenancies.

Mr. *Sexton.*

242. These figures do not touch any adjustment under Mr. Balfour's Act, any temporary adjustment under the Act of 1887?—Oh, no, to 1889, 22·7 for yearly tenancies, and 25·8 for leaseholds; to 22nd August 1890, 21·2 for yearly tenancies, and 23·5 for leaseholds; and for 1891, 21·8 for yearly tenancies, and 23·1 for leaseholds. Then you come to a period in which the date of the report was altered. I mean for the period 22nd August 1891, to 31st March 1893, the date of the Report was altered so as to bring it to the same as the end of the financial year, and for that period the percentage of yearly tenancies is 23 per cent.; of leaseholds 21·9, and of rents fixed under the Redemption of Rent Act (which would come in for the first time) 26·6. That is so far as we have made it out. This is only for Chief Commission and Sub-Commissions; this does not deal with county courts, or with rents fixed by agreements lodged.

Chairman.

243. It does not deal with county courts?—No; it only deals with Sub-Commissions.

Mr. *T. W. Russell.*

244. Have you nothing for the county courts?—No. We have tables which you will see in our Report when we bring it out; in the Appendix there will be a table giving comprehensively the percentage of reduction made each year by the Land Commission and by the County Court.

Chairman.

245. It would be surely very important to compare county court judges' reductions with the Commission reductions?—We have always kept them separate. Would you rather have them brought out together or kept separate?

Chairman—continued.

246. No, I think separately. I think it would be an advantage to have them separately?—Very well.

Mr. *Sexton.*

247. Could we have the classification of dismissed cases showing the cause of dismissal, or summarising the causes of dismissal, showing where they were due directly to statutory exclusion and where they were due to want of status, as you have said, on the part of the tenant?—You can. I would not undertake to say that it would be very accurate, owing to the way in which the Orders were drawn up at first and at present.

248. Could you analyse them now between the three heads, "struck out," "withdrawn," and "dismissed"?—There is a return made of the last year (*handing the document to the honourable Member*). Perhaps we could make up a return in that form. The only thing is that I would not vouch for the accuracy previous to 1883.

249. Approximately you could give it?—Yes.

Chairman.

250. It might be convenient; I think it is in your Reports. I think the classification is to be found there, the distribution of those reductions in provinces?—In provinces and counties?

251. In provinces and counties, it includes both?—Yes.

252. Now we must have a little about the Redemption of Rent Act, which is in our Order of Reference. What, if you can put it shortly, was the object and drift of the Redemption of Rent Act, 1891?—The object of the Redemption of Rent Act was to allow persons holding under long leases, so long that they were excluded from the fair rent clause of the Land Act of 1887, and parties holding under the Fee Farm Grants to apply to the Court to have their rent redeemed; in other words, to purchase their holdings.

253. The Court being able to compel the landlord to allow the tenant to redeem, do you mean?—No, the owner of the rent; you may call him the grantor, or the lessor as the case may be, if he signified his consent to the redemption in the prescribed way, then the case became a purchase case, and the tenant purchased the holding at a price fixed by the Land Commission. If he did not signify his consent then the case became a fair rent case and was sent down to the Sub-Commission, or if he signified his consent, and subsequently interposed delay, and did not carry out his redemption, then the Land Commission have the power to make an order and send it down to fix a fair rent.

Mr. *T. W. Russell.*

254. The grantor had the option of purchase or fair rent?—Of sale or fair rent.

Chairman.

255. Then you fixed your procedure, I suppose, as to forms?—We fixed our procedure. We kept as far as we could to the similar procedure in the other cases. Of course, being a purchase matter in the first instance, we had to

Chairman—continued.

make our form of originating notice a little more elaborate, and we thought it right that the tenant should verify the particulars before it was served at all, and similarly that the consent of the landlord should be verified, and that maps should be lodged; but otherwise the forms are practically the same as in ordinary fair rent cases.

256. If no consent is signified by the lessor or the grantor, what happens then?—The lessor or the grantor has two months within which to signify his consent. If he is absent from the country we extend the time for him, but if he does not signify his consent then it goes as a matter of course before a Sub-Commission.

257. In cases under this Act, how do you deal with improvements?—In the case of fee farm grants, do you mean?

258. Take first of all the cases where there is an option of purchase?——

Mr. *T. W. Russell.*

259. Where the landlord elects to sell?—Where the landlord elects to sell, if it is the case of a fee farm grant, or such a case as a fee farm grant, then the improvements effected by the tenant are considered as adding to the security of the rent.

Chairman.

260. I think you must explain, for the benefit of some members of the Committee, what a fee farm grant exactly is?—A fee farm grant is a grant in fee subject to a perpetual rent.

261. It is a perpetuity?—It is a perpetuity. I do not think they exist in England very much.

Mr. *Leese.*

262. Something like a chief rent, I suppose?—It creates the relation of landlord and tenant.

263. The property itself; but there is a head rent paid on it?—The is a head rent paid on it.

Mr. *Macartney.*

264. Similar to a Scotch feu, is it not?—I do not know.

Chairman.

265. It is not like copyhold, which is tenure, it is the result of a contract?—It is the result of a contract. You may practically take it in the case of fee farm grants, that the result of the decision has been this: In the case of fee farm grants the tenant's improvements are treated as the landlord's property. You may take that to be the case.

Mr. *T. W. Russell.*

266. In fact the tenant has to buy his own?—He buys his own.

Mr. *Sexton.*

267. Do you mean under a fee farm grant, the holding is valued as it stands that the value is considered to belong wholly to the landlord?—Yes. The case on the subject was the case of a question of fair rent, the case of Kieran and Mollan.

Mr. *W. Kenny.*

268. What you call the tenant is the owner in fee, subject to a rent?—Yes.

Mr. *Sexton.*

269. In buying the holding he has to buy his own improvements no matter how obviously or how notoriously they may have been made by him?—Certainly.

Chairman.

270. This is not a matter of opinion, it is a description you are giving of what actually and openly takes place?—I can refer to the cases that have been decided on it. Of course the question has come up for decision.

271. That is the Meath case is it not?—Kieran and Mollan.

Mr. *T. W. Russell.*

272. It is only a month or six weeks ago?—Oh, it is more than that—it is in II. Irish Reports, 27.

Mr. *W. Kenney.*

273. II. Law Reports, Ireland?—II. Irish Reports.

Chairman.

274. Now we well pass from purchase under the Rent Redemption Act, to the fair rents fixed under the same Act?—Yes.

Mr. *T. W. Russell.*

275. That is in the case where the grantor elects to have a fair rent fixed?—Yes.

276. What happens then?—Exactly the same. O'Hea and Morrison, 30 Law Reports, Ireland, 651, is the case in reference to the redemption of a fee-farm rent by a grantee.

Chairman.

277. What year?—That would be about 1892, I think as far as I recollect. It is page 471, of Cherry; Kieran and Mollan deals with fair rent; O'Hea and Morrison deals with purchase, but they are all the same principle; I mean a tenant has no claim under the Land Act of 1870 to any deduction for improvements. When I say "tenant" I mean the owner in fee; the grantee has no claim or any right for improvements.

Mr. *Sexton.*

278. And must pay for them in the case of purchase?—He must pay for them in the case of purchase.

Chairman.

279. In the fair rent fixing how do you deal with the improvements? You have a Schedule, I see; is not that so?—Do you mean under the Redemption of Rent Act?

280. I am entirely on the Redemption of Rent Act now?—As soon as the time limited for consenting to purchase has passed, within 14 days from that, the tenant ought to serve a Schedule of improvements.

281. And then the process goes forward in the ordinary way?—The process goes forward in the ordinary way.

282. Does a landlord ever apply to have the true value of the tenancy fixed?—Very often.

283. I am still on the Act of 1891; the Rent Redemption Act?—I don't recollect any case of true value being fixed under that Act.

284. It does not come in there?—The true value cannot apply to the Act of 1891 except in a case where a judicial rent has been already fixed.

285. Then

Chairman—continued.

285. Then I have only two or three more questions I should like to ask you. It would be convenient to some members of the Committee, though to others it is A B C, that you should tell us who are the persons entitled to have a fair rent fixed; what classes of persons?—A tenant of a present ordinary tenancy.

286. Would you number them; that is, No. 1?—Then leaseholders under the Act of 1887; then leaseholders under long leases and grantees under fee-farm grants, where the landlord does not elect to buy under the Act of 1891.

287. How many categories are they?—Practically three.

288. Three; the present tenant, the leaseholder, and the fee-farm grantee?—And the fee-farm grantee. The leaseholder under a lease to which the Land Act of 1887 applies, the leaseholder under a lease to which it does not apply, or the fee-farm grantee if the landlord does not elect to buy.

289. Now you have told us who are the persons entitled to have a fair rent fixed, tell us in one answer what are the classes of holdings in respect of which a fair rent can be fixed; or to put it the other way up, what are the exclusions; answer which way you like?—The exclusions are those contained in the 58th Section of the Land Act of 1881, that is: "Any holding which is not agricultural or pastoral in its character or partly agricultural and partly pastoral; or (2) any demesne land, or any land being or forming part of a home farm"; though I may say in reference to home farms, it is a term not applicable to Ireland. I think the question has been raised in a very few cases; there are practically no home farms in Ireland, as understood by the English term.

Mr. *T. W. Russell.*

290. There are a good many excluded by the Act because they are home farms?—I think not; I think there are very few.

Chairman.

291. How many classes have you got there; demesne lands, town parks—— ?—I have not come to "town parks."

292. Oh, you have not mentioned town parks? No. Then "Any holding let to be used wholly or mainly for the purpose of pasture" if valued at not less than 50*l.* a year; then "any holding let to be used wholly or mainly for the purposes of pasture," no matter what the valuation may be, if the tenant "does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which" he does reside; then "Any holding which the tenant holds by reason of his being a hired labourer or hired servant"; then "any letting in Conacre or for the purposes of Agistment or for temporary depasturage." So that in reality there is no tenancy in this. Then "any holding let to the tenant during his continuance in any office, appointment or employment, or for the temporary convenience or to meet a temporary necessity either of the landlord or tenant"; then "Any cottage allotment, not exceeding a half of an acre," and "any glebe"; that is the last exception.

Chairman—continued.

293. Those are all the exclusions?—Those are all the exclusions, all that I think of at the present moment. Then, of course, I am not referring in those exceptions to any case in which the tenant is not in occupation of his holding.

Mr. *T. M. Healy.*

294. There are a number of refinements on these?—Quite.

Chairman.

295. Those will come out later; I only want to get before the Committee a general account of the thing. Then the Act of 1885 has no bearing at all on the order of reference to this Committee?—The Act of 1885 does not touch the question of fair rent.

296. In the Act of 1860; it is not mentioned in the order of reference, but I was told afterwards that it might have been better, perhaps, that it should have been included. Has the Act of 1860 any bearing on the construction of later Acts?—It has no bearing except this, that the Act of 1860 is an Act which regulates the existence of the relations of landlord and tenant; you have to look to the Act of 1860 to see whether the relation of landlord and tenant exists.

297. One more question; I really do not know whether you can answer it, or whether it is fair to ask it; but if you can answer it, I think it would be very convenient to the Committee. Could you shortly state or give a list of leading cases to which you, the Land Commissioners, have most often occasion to refer, and what are the points decided in those leading cases. It may be too much for an answer, but I am sure it would be convenient in wandering through this wilderness of a book if you could give us the names?—I do not think I could give you a complete list, but I could mention some. Take the case of "improvements"; there is the case of Adams *v.* Dunseath.

298. I mean the cases on the principles which most often come into your minds?—On the question of "improvements," there is Adams *v.* Dunseath.

299. They are all in "Cherry," I suppose?—Yes.

Improvements:

Adams *v.* Dunseath, 10 L.R.I.
Walsh *v.* Limerick, 23 I.L.T.R. 17.
Mollan *v.* Kieran, 2 I.R. 27.

Townparks:

Kelleen *v.* Lambert, 10 L.R.I. 362.
Nelson *v.* Headford, 18 L.R.I. 407.
McNamara *v.* McNamara, 32 L.R.I. 1.
Caledon *v.* Archer, 28 I.L.T.R. 4.
Perry & Co. *v.* Goodbody, C.A. Judgment, February 1894.

Pasture:

Westropp *v.* Elligott, 9 App. Cases, 815
O'Brien *v.* White, 16 L.R.I. 15.
Fulham *v.* Garry, 26 L.R.I. 698.
Harper *v.* Davies, 12 L.R.I. 23.
Drought *v.* Stubber, 18 I.L.T.R. 37.
Holmes *v.* Lauder, 22 L.R.I. 47.
Eivart *v.* Hamilton, 28 L.R.I. 464.
Byrne *v.* Hill, 30 L.R.I. 603.

Chairman—continued.

Demesne Lands:

Hill *v.* Antrim, 5 I.L.T.R. 70.
Griffin *v.* Taylor, 16 L.R.I.
Magner *v.* Hawkes, 32 L.R.I. 285.
Spencer *v.* Tedcastle, 32 L.R.I. 411.
Moore *v.* Batt, 32 L.R.I. 68.

Residential Holdings:

Doyne *v.* Campbell, I.R. 9, C.L. 95.
Carr *v.* Nunn 7 I.L.T.R. 26.

Mill Holdings:

Foster *v.* Boyle, 30 L.R.I. 623.

Sub-Letting:

McConachie *v.* Robertson, 18 L.R.I. 483.
Kennedy *v.* Essex, 28 L.R.I. 586.
Wakefield *v.* Robinson, 30 L.R.I. 547.
Thompson *v.* Rossmore, 32 L.R.I. 431.
Bowman *v.* Catherwood, 28 L.R. 470.
White *v.* White, C.A. Judgment, February 1894.
Corballis *v.* Ward, C.A. Judgment, April 1894.
Cowell *v.* Buchanan, 30 L.R.I. 375.
(*The document was handed in.*)

Mr. *Macartney.*

300. I want to ask you a question on the Redemption of Rent Act; procedure in the case where a landlord, or grantor, or the lessor, as the case may be, has agreed to sell to the grantee, or lessee: what is the procedure of the Commission then?—Under the distribution of business between the Commissioners it goes either before Mr. Lynch or myself (all Redemption of Rent cases), and then is treated as an ordinary purchase matter after that.

301. What is the first step taken, or what takes place with regard to ascertaining the value. I want to know what steps you take; is there a valuer goes down?—Certainly.

302. That is what want to know?—As soon as the landlord has signified his consent under the Statute to the purchase, one of our purchase inspectors, sometimes two, are sent down to inspect the holding, and they fill up a report on it, not a report on the forms that we have before us here, but a report as in a purchase case. We have that, and then we hear, either *viva voce* or by affidavit (generally by affidavit), we fix a day for the hearing; we hear the parties and hear any evidence they may produce of value, and then fix the redemption price.

303. These inspectors, or the persons who are sent down to report; Assistant Commissioners, are they permanent officials?—Yes, they have warrants as Assistant Commissioners.

304. They are all Assistant Commissioners?—They are all Assistant Commissioners, but separate; they are kept separate, as a general rule they are not moved backwards and forwards, except some, some are; some are employed for both purposes.

305. Can you hand in a copy of the form?—No, that is entirely "purchase," I brought over no purchase forms.

306. Then, how is this procedure settled with regard to redemption?—It is settled by rules.

Mr. *Macartney*—continued.

307. Then before you, this is the only procedure that exists in the case of sale, or consents to sale?—Yes.

308. There is no question of arbitration?—No; I think we assume when the parties come in before us that they have not agreed upon a price.

309. What I want to ask is this, because the first section of the Redemption of Rent Act appears to prevent that in the case of where they have agreed to sell, and I thought, although they may not agree upon a price, they may agree to refer it to arbitration, I want to know how that is?—Of course, if they have power to refer it to arbitration, there would be no difficulty about it; by rules they might refer everything to arbitration.

310. But are there any?—Not under that Act specially. It does not say anything about arbitration, it merely says that "such redemption shall be effected by payment, subject to the rules of the Land Commission, of such capital sum as may be agreed upon, or as in case of difference may be determined by the Land Commission (regard being had to the adequacy of the security), in like manner as if it were a head rent redeemed under the provisions of Section 16 of the Land Law (Ireland) Act, 1887."

311. That is exactly what I mean?—That refers to arbitration there; there are rules referring to arbitration under the Act of 1887, they would be applicable to it if the case arose, but as a matter of fact, I do not think we have had any application to refer the redemption price to arbitration, so far as I know.

312. But there is nothing in the procedure of the Court with regard to this which would prohibit it?—Nothing that I see.

313. It would not be necessary to appeal against the procedure of the Court, in case of either party desiring to go to arbitration instead of having the amount fixed by a Commissioner?—No, I do not think so; but as a matter of fact, it is a much more costly procedure going to arbitration than having it fixed by the Land Commission, we find that in practice. If anything is injuring the Redemption Act in Ireland at present, it is the great cost of redeeming head rents by arbitration.

314. With regard to these forms can they be put in?—Any forms you like can be put in, but I have not got any forms connected with any purchase matter here, I did not know the Committee were going into that. We have a copy of the form of application under the Redemption Act here.

Chairman.

315. I think you might get for us all the forms under the Rent Redemption Act, relating to purchase as well as fair rent?—Certainly.

Mr. *W. Kenny.*

316. The Redemption of Rent Act refers to fee farm grants; in Ireland there are two classes of fee farm grants?—Yes.

317. And,

Mr. *W. Kenny*—continued.

317. And, I believe according to a decision of the Land Commission, I do not know whether it was confirmed, I believe it was confirmed by the Court of Appeal, it has been held that the Act is restricted to one class, is not that so?—It has been held that the Act is limited to the class where the relation of landlord and tenant existed.

318. Did not they confine it to cases where these was an old lease renewable for ever?—The relation of landlord and tenant does not exist; where the fee farm grant was executed previous to the year 1860, except under the Renewable Leasehold Conversion Act or some similar Statute. There are a certain class of cases where subinfeudation is permitted.

319. The effect of that is, that fee farm grants (pure and simple fee farm grants) executed before 1860 are excluded from the purview of the Act?—That is a decision of the Court of Court of Appeal. I dissented from the decision in the Land Commission Court, and was overruled.

320. That is a decision of the Court of Appeal?—That is a decision of the Court of Appeal.

321. Now I think you said under the Redemption of Rent Act improvements are not considered at all?—No, I did not; I said in the case of fee farm grants.

322. In the case of fee farm grants; I think some members of the Committee would certainly like to know why?—You will see the whole reasoning set out in Mr. Justice Bewley's judgment in Kieran *v.* Mollan.

323. There is one other question with reference to the Redemption Act. How long is the system in practice of employing Sub-Commissioners as valuers?—Certainly since March 1891, I think, as far as I recollect.

324. Then previously to that, you had, I suppose a special class of valuers under the Land Commission?—No, I cannot say that; at first when appeals commenced to be heard in 1882 the Land Commission had got a certain number of valuers, and they had valuers in all appeal cases. These gentlemen had not been Sub-Commissioners, and never were Sub-Commissioners. That system went on for some years, when it was discontinued, I think to 1884. I can hand you in a table showing the dates that these appeal valuers were done away with, only one, I think, being kept, one permanent—that is Mr. Charles Grey. I think he had two or three assistants, and they were used only in exceptional cases. For example, if we had an appeal, and one member of the Commission thought the rent ought to be different from what the other two thought, we generally sent it out to be valued to assist us in our determination; but that was only in exceptional cases. Then the system was reintroduced in March 1890 of the valuers. Then the valuers that were selected were principally Sub-Commissioners, Sub-Commissioners with experience.

Mr. *T. M. Healy.*

325. You have put in here a file showing the procedure in every case that comes before you?—Yes.

Mr. *T. M. Healy*—continued.

326. I take it that this file is taken at random?—I do not recollect. What file is it?

327. The landlord's name is Thomas Gilman. He lives in Canada. The tenant's name is John Sullivan, he comes from the inevitable Bantry, in the county of Cork. I wish to ask you, if you please, the course of this procedure; the tenant's originating notice is served on 6th December 1888?—Yes.

328. He serves his originating notice in the Civil Bill Court?—Yes.

329. That was on 6th December 1888?—The judge of the Civil Bill Court at Cork at that time is since dead, I think?—Judge Ferguson?

330. Judge Ferguson. It was transferred then by Order of the Land Commission immediately thereafter to the Land Commission Court; and the Court of the Land Commission at that date, I see, consisted of Mr. Doyle, Mr. Walpole, and Mr. Vandeleur?—Yes.

331. Now was it not notorious at that date to begin with, that in the county of Cork, the valuer attached to the County County judge was a gentlemen who had given large reductions to the tenants?—I do not know; I cannot give you any information about that period, I was not a member of the Land Commission.

332. At any rate had not Mr. Doyle, Mr. Walpole, and Mr. Vandeleur, who, I presume was a landlord, had not these gentlemen become the subject of constant debate in this House and constant references?—I do not know, really; I was not a member of the Land Commission at that date.

333. I will pass that by. According to Mr. Doyle's report this tenant, John Sullivan, had his rent raised. His rent, as it came before the Court, was 45*l.*; the case is then heard; the rent was raised in 1856 from 30*l.*, and he continued paying that rent until his case was heard in the Land Commission Court on 18th June 1891; so that it took nearly three years before he reached the original Sub-Commission Court?—Yes.

334. His fair rent was fixed at the rent from which it was raised 32 years before; that was fixed at a fair rent?—Brought back to the old.

335. Brought back to the old rent. The tenant then appealed to the Land Commission, the Chief Commission, and it was not heard in the Chief Commission until 21st June 1893, when it was reduced from the 30*l.* to 28*l.*?—Yes.

336. So that it took this tenant five years before he got his case finally heard?—There is no doubt about it that at that time there was a tremendous block of cases.

Chairman.

337. Which time, 1888?—1887 and 1888. My recollection is—I am merely talking generally—that when I became a Land Commissioner in 1890 there were some 60,000 outstanding applications to fix fair rents, and I think there were about 8,000 or 9,000 outstanding appeals; but at the same time that seems to me to be a very

Chairman—continued.

long period; there must have been something exceptional about it.

Mr. *T. M. Healy.*

338. You transferred it as a matter of course from the Civil Bill Court to the Land Commission Court?—Yes.

339. It could have been heard immediately in the Civil Bill Court?—It could have been heard in the Civil Bill Court immediately.

340. It was transferred as a matter of course?—As a matter of right.

341. You hold that as a matter of right?—We hold that as a matter of right. You will see there I think if there was any cause shown against transferring.

342. There appears to be none?—If there is any cause shown against transferring it is always made part of the Order, that no proceedings can be taken against the tenant until the rent is fixed.

343. That does not appear on the Order. I have the Order of Transfer, and there is no such thing so far as I can see. If you can refer me to it I shall be much obliged (*handing the file to the Witness*)?—No cause was shown.

344. Therefore during all these five years, this man was liable to eviction for that rent of 45*l.*, which he showed on your finding could only be fair at 28*l.* He remained for these 32 years paying this extra rent of 17*l.* a year; that would be 544*l.* over and above a fair rent, which he had paid for these 32 years. I wish to ask you, is any allowance made by the Land Commission where a tenant has been paying a rack rent of that kind, which you show not to have been a fair rent, is there any allowance made to the tenant?—No; we have no jurisdiction to make any allowance on account of an excessive back rent.

Mr. *T. W. Russell.*

345. When does the new rent now date from?—The rent dates from the Gale day immediately succeeding the originating notice.

Mr. *T. M. Healy.*

346. The Sub-Commission having fixed the rent at 30*l.*, which was the rent he had been paying in 1856, you fixed it at 28*l*?—Yes.

347. And the Poor Law valuation, which includes buildings, is 20*l.* 10*s.*?—Yes.

348. When that valuation was made, did not Sir Richard Griffiths state that he valued the land as he found it?—I could not tell you, but I have found the Poor Law Valuation in Ireland extremely inaccurate. I pay practically no attention to it, it is so inaccurate; I mean personally I pay very little attention to it, it is so inaccurate.

349. I see in this case that you allow this gentleman, who is in Canada, to have built the tenant's house; do you think that was a likely thing?—I could not tell you; I do not recollect the evidence in the case.

350. Is not that one of the probabilities of the case?—I could not form any opinion at all.

351. I take it *this* is taken quite at random?—Perfectly; I have never read it.

Mr. *T. M. Healy*—continued.

352. Just one other question: You charge him a pound for his bog; you allowed the landlord for turbary (1*l.*) one pound?—Yes.

353. You allow the landlord ten pounds, I see, for the house that this man occupied, and the Sub-Commission and your own valuer fixed the rent at 30*l.*, and you fixed the rent at 28*l.*; the valuer you sent down finds, having allowed the landlord ten pounds (10*l.*) for the house and one pound (1*l*) for the bog, the fair rent should be 27*l.*?—The Sub-Commission found it ought to be 35*l.*, is it not?

354. £.30. The Chief Commission sent down a valuer. Mr. Edward Moroney says that, having allowed the landlord 10*l.* a year for an old house (this gentleman lives in Canada), he took all the circumstances of the case into consideration, and he reports that the fair rent of the holding should be 27*l.*?—That was his opinion. The opinion of the two lay Commissioners apparently was 35*l.*

355. No, 30*l.*?—£.30. I beg your pardon: and, after hearing evidence, we fixed it at 28*l.*

356. Now, may I ask on what principle?—I have not the remotest recollection of this case. I cannot tell what evidence was produced on each side; but whatever evidence there was, I sifted and came to my opinion upon it as a lawyer accustomed to sift and listen to evidence. I used the reports of the valuer, and I relied upon the reports of the Sub-Commissioner, and did my best.

357. Do you see who the tenant's valuer is?—He is a landlord, is he not?—The tenant's valuer?

358. Yes, he is a well-known landlord, Mr. Barrett. He is a very well-known gentleman in that locality is he not?—Yes.

359. That may be taken as a typical case?—It may be taken as an ordinary case; it is taken at random.

360. It is stated in this case of John Sullivan that no costs were allowed?—Yes.

361. You, of course, were not a Commissioner when the scale of costs was revised?—Yes, I was.

362. But is it not a fact that the costs in the Land Commission are exceptionally low?—Well, I think they are exceptionally high, it would be well if we could reduce them in anyway. I mean in fair rent cases.

363. What I mean to say is this: The costs allowed to the victorious party?—Are exceptionally low?

364. Yes?—I do not think so. I can tell you the amount which is usually allowed. I asked the solicitor of the Land Commission, who taxed the costs, and he gave me a return which approximately gives the amount of costs; in cases where the rent does not exceed 5*l.* with one valuer, about 2*l.* with two valuers, 2*l.* 15*s.* with two valuers and counsel, about 4*l.*, and so on.

365. What I wish to ask you is this, whether the victorious party in the Land Commission, as a rule, is not the person who gets his fair rent fixed?—The victorious party?

366. The person who wins the suit as a rule, in the Land Commission Court, is the tenant?—He gets his fair rent fixed.

367. Therefore in the vast majority of cases, the person

Mr. *T. M. Healy*—continued.

person who is eased, assuming the costs to be low—is the landlord. That would be so, would it not, the low scale of costs benefits the landlords?—Low costs are given them.

368. That is my point first and foremost; no matter how successful the tenant may be, and how wrongful the action of the landlord, the tenant gets no costs against him?—In the first instance, none.

369. In the first instance none whatever; and in the second place, assuming the costs to be low, it is the landlord who is, as a rule, the failing party, and he gets the benefit of that low schedule of costs?—I do not quite follow you there. As a matter of fact, neither party get any costs as a rule in the first instance.

370. Suppose you followed the ordinary practice, that the costs should follow the event, would not the tenant, as a rule, be the party entitled to costs?—At the commencement of the Land Commission that question was very much considered, and the Commissioners came finally to the conclusion that in fair-rent cases, except under exceptional circumstances, there ought to be no costs.

371. Who does that hit; does it hit the landlord, or does it hit the tenant?—I think it hits neither party.

372. Does it not hit the victorious litigant to be deprived of his costs?—It is not like an ordinary legal matter, it is a question of alteration of rent. I mean, there are plenty of people to come into Court when, by change of times, the old rent may have been fair.

373. But are not the suits that are tried in the Land Commission Court more important than many others?—The question is, what is the amount of the rent.

374. Are not the issues far more important than those in an ordinary record?—In some cases they are, and in some they are not.

375. You think, on the whole, it is fair that 300,000 persons who have got their rents fixed showing their rents previously had been too high, should have been in every case deprived of their costs?—I think it is fair on the whole that there should be no costs on either side. I think that is the best system.

376. Originally, as I understand, Mr. Commissioner, you acted not only as a county court judge, but you also fixed rents as a Sub-commissioner?—Yes.

377. I think in the county of Tyrone, and largely in the north of Ireland?—Yes.

378. Can you tell me whether the Ulster custom was, as a rule, present to the minds of the Sub-Commissioners, and constantly taken into account by them in the original fixing of the rents?—I would say so, certainly.

379. You would say that it was?—Yes.

Chairman.

380. The Ulster custom was taken into account?—The Ulster custom was taken into account.

Mr. *T. M. Healy.*

381. And that practice still obtains?—I think so, certainly.

Mr. *T. M. Healy*—continued.

382. You think the Ulster tenants, then, as a rule, get the benefit of the Ulster custom?—I think so.

383. But you say, having regard of course to what has occurred since, that the rents fixed by you in 1881 and 1882—you and the other Sub-Commissioners—would remain fair rents during the period of 15 years?—I would say that many of the rents fixed in 1881 and 1882 by me are too high now.

384. Are too high now?—Yes.

385. I see that Lord Cowper's Commission in its Report recommends the judicial term to be five years?—Yes.

386. Can you give us the exact date when these pink papers were issued. Do you think we could get the exact date?—Yes; the pink form has been altered several times. The first pink form was issued on 1st June 1888; that was only in use till the 23rd July 1888. Then on the 23rd July there was an alteration made, and that was kept up to December 1888. From January 1889 to April 1889 there was another alteration, but from April 1882 to April 1891, two years, there was no alteration. From April 1891 to the end of January 1893 another alteration was made; and then in February 1893 the form that is at present in use was settled. This was settled by a sub-committee of assistant Commissioners, Sub-Commissioners, whom we got from their practical knowledge to go through the matter and settle what they considered to be the best form.

387. From the 1st June 1888 to the 23rd July 1888 I think you say the first pink paper was issued as instructions; can you say, or can you find out, whether there were any instructions or forms to be filled up by the Sub-Commissioners prior to that time?—Yes, there was a blue form which came into use in April 1882. That remained in use until the 20th May 1887, when a white form was introduced, which was a little more elaborate.

388. You can put in all those?—I can put in all those, and a list of the dates. I had better put that in now. (*The document was handed in.*)

389. When you went down as a Sub-Commissioner you had no form of any kind?—No, certainly not.

390. No instructions, nor had you any documents to fill up showing the operations of the Sub-Commission?—No.

391. Do you think it would be desirable to introduce into that pink paper a table showing the amount of improvements on the farm, and the amount respectively allowed to landlord and tenant?—I do not see any practical objection to it.

392. Do you think that for purposes of appeal it would not be an advantage?—The only objection at all to it is that the more you go into detail the more difficulty there is in getting two or three men to agree to each detail. You can generally get them to agree to a result which they may arrive at in different ways. That is the only objection; it would make the business go slower.

393. You go into remarkable details as to the carrying power, the number of columns?—Well,

Mr. *T. M. Healy*—continued.

Mr. Healy, everybody who has been much in Cork knows very well that a farm is valued by the number of cows upon it.

394. Just so; and is it not just as difficult to agree as to the number of cows the land will carry as it is to agree as to the amount of improvements effected on the holding?—That I would not exactly say; I would not exactly go with you there. At the same time, I do not see any very great objection to it.

395. You spoke of the fact that a certified copy of this pink paper could be had for a shilling. Is it not the fact that that pink paper is not receivable in evidence before any tribunals such as the Civil Bill Court?—I believe it is not; I believe they do look at it, but it is not evidence.

396. So that, to take the case of John Sullivan, to whom I have already referred, you fixed the rent on the assumption that he had bought turbary; there would be nothing to show if afterwards the landlord tried to deprive him of turbary in the Civil Bill Court, that he was actually rented on that by the Sub-Commission Court?—As a general rule, in the order of the Sub-Commission, where free turbary is attached to the holding, it ought to be, and generally is, stated on the actual order that the rent has been fixed upon the basis that the tenant shall have free turbary on the landlord's bog, so and so.

397. You said that there were no appeals in the Land Commission. Do the tenants adhere strictly to the form of their originating notice; for instance, if a man applied on one form when he should have applied on another, you refused to allow any amendment, did not you, and dismissed the tenant out of Court?—It was the case in former years that, where a yearly tenant applied under a leasehold form, or *vice versâ*, we would not amend; but there are much more liberal ideas come in since then.

398. Do you remember that Judge O'Hagan, at any rate, very frequently refused appeals on what he called mixed questions of law and fact. Does that rule still prevail?—Oh, no; I never heard of his refusing an appeal on mixed questions of law and fact. When I joined the Land Commission what they usually did was this: If an appeal was asked for in a case in which the Chief Commissioners agreed in their decision with the Sub-Commission, two Courts having agreed, they would not grant an appeal.

399. Have not you simply refused even to grant, in Lord Ormonde's case, an appeal on mixed questions of law and fact?—No. In the first place, in Lord Ormonde's case, that is a case on the purchase side, that depends on a different section of the Statute; we have no power either to grant or refuse to grant an appeal; there is an appeal on questions of law, and there is no appeal on questions of fact.

400. I wish to ask you this with regard to some of the exclusions that have operated in the lists you have given. These lists of exclusions have been considerably added to by construction, have they not?—I mean that new cases have arisen to which the exclusion has been made to apply.

401. For instance, take the decisions affecting a tenant for life (that is Massey *v.* Norse), has not that led to a tremendous exclusion?—That has led to a certain exclusion, Massey *v.* Norse, undoubtedly.

Mr. *T. M. Healy*—continued.

402. Would not you say a very large number?—I could not estimate the number at all; I should think, comparatively, not large.

Mr. *T. W. Russell.*

403. Tenants for life?—Yes; where a tenant for life makes a letting and then is succeeded by another tenant for life, the 15th section does not apply to the case. That has been held.

Mr. *T. M. Healy.*

404. The case of Peyton *v.* Gilmartin, has not that led to a very large exclusion?—I do not think so; they have not come before us, if so. There has been a certain number; I do not think a large number, but they might arise.

405. A large number might arise?—I think they might.

406. Suppose you had to try over again the question of the right of a tenant to come into Court after the conclusion of the 15 years' statutory term, do you think that a very large number who have already had their rents fixed would not be hit and excluded by recent decisions?—They only could be hit in those cases where a tenant for life died, and the succeeding tenant for life had become his landlord. That is the only case I can think of.

407 Take the case of a middleman who has been ejected himself, even if a fair rent has been fixed on the under tenant, that fair rent is put an end to?—If he is ejected for non-payment of rent, yes.

408. Is that an equitable state of the law?—Well, I offer no opinion. That is the law.

409. Then you have refused to fix fair rents, I understand, on agricultural holdings where there was a non-agricultural right attached. There was the case of Freshford, and the tolls of the market?—It is the same. The Court of Appeal have laid down these as questions of law, and undoubtedly that case of Freshford, to my mind, operated very hardly. It is a case in which some land near the town of Freshford, and the tolls of some market at Freshford were included in the lease. The market tolls were worth about 8*s.* to 10*s.* a year, or something very small. Nevertheless, the Court held that being included in a bulk rent in the lease, and being absolutely non-agricultural in their character, there was no jurisdiction in the Land Commission to fix a fair rent.

410. In the same way even a burnt-down mill has been held to exclude the tenant from the benefit of a fair rent?—I understand so. I do not recollect the case to which you refer.

411. Take the case of an ordinary mill—a flax mill or a bit of a corn mill?—The leading case upon the subject of mills is that of Boyle *v.* Foster. In that case, in which a fair rent was fixed by the Land Commission, an appeal was taken to the Court of Appeal, and the case was dismissed out of court. I do not recollect the amount of land that was included in the lease, but it was a very considerable amount of land—

Mr. *T. M. Healy*—continued.

90 or 100 acres—and the rent reserved by the lease, was, as well as I recollect, about 280*l.* a year; and there was a provision in the lease that if the mill was burnt the rent was to be abated by 80*l.* a year. The principle upon which the Land Commission went was to see which was the more important thing—the land or the mill; we sent down some of our valuers who had some knowledge of mills, and we came to the conclusion that the land was the more important, and we fixed a fair rent in consequence. An appeal was taken to the Court of Appeal, and the Court of Appeal laid down that if any substantial portion of the holding is non-agricultural, there is no jurisdiction to fix the fair rent.

412. Then you are aware, are you not, that it has also been held to apply where there was a several fishery, a salmon fishery, included in the lease?—I do not recollect the case. It was attempted to be raised in a case in Kerry, but they were not able to prove a fishery, I think.

413. Those may be taken as instances?—I cannot say as to the fishery. I do not recollect it.

414. There was another case of an oyster bed, which was held to be excluded?—I do not recollect it.

415. It may be taken that if there is a substantial portion of any holding non-agricultural, the Land Commission is excluded from dealing with the agricultural portion?—Yes.

416. And that was also applied to the case of Sir Richard Barrow, where there was a piece of demesne land?—Yes.

417. I suppose the same would apply to a piece of any other of the excluded land—demesne land, home farm, town park; if there is any piece of excluded land in the agricultural holding, that agricultural holding is said to be excluded?—Well, I cannot say as to town parks, because that question has not arisen so far as I know. I may be called upon to decide it.

418. Has your attention been drawn to classes of cases where the tenant has been excluded when the landlord happened to be the middle man, with a clause of alienation in his lease?—It has arisen in three or four cases before us. The last case I recollect arose in County Antrim, and by some means or other we fixed a rent.

419. Does the law stand that a tenant holding under a landlord, who himself has a clause alienation in his lease?—A clause against sub-letting.

420. A clause against sub-letting in his lease; I want to know whether that tenant is excluded from the benefit of the Land Act?—I would take it so.

421. That has operated in the case of Gilman *v.* Murphy, and caused great hardship, has it not?—Gilman *v.* Murphy was not a case under the Land Act at all. Gilman *v.* Murphy was a most dreadful fraud.

422. But that class of decision does operate under the Land Acts?—Not in many cases; in very few cases.

423. In whatever cases it exists it operates?—Oh, yes.

Mr. *Leese.*

424. I just want to ask one question. I do not quite understand the term of this fee-farm grant; is it a tenure that passes the freehold?—It passes the fee; yes.

425. Then the purchaser pays a rent?—He pays a rent; yes.

426. A perpetual rent?—A perpetual rent.

427. What happens in the case of non-payment of rent; is there a right of ejectment? There is a right of ejectment for non-payment of rent under the statute.

Mr. *Dillon.*

428. Do you say that since March 1893 you have had charge of the fair-rent department?—Yes.

429. Who had charge before that?—Before 1893 there was no allocation of duties between the various members of the Commission. The whole fair-rent department was with Mr. Justice Bewley, Mr. Wrench, and myself. We were the three Commissioners under the Act of 1881. We had no regular allocation of duties. Mr. Wrench made the arrangements, and consulted me in reference to them.

430. Up to March 1893 Mr. Wrench was, practically speaking, in control of the division and distribution of the business?—He had control, but he consulted me in everything.

431. He took the initiative?—He took the initiative; yes.

432. Would you kindly explain fully what that control amounted to? What I wish to know is this: You said of your own duties that you determined what circuits the Commissions would take; that is, what district they would operate in?—Yes.

433. Do you also determine the position of the Sub-Commissions?—Yes.

434. You can then, at any moment, alter the position of the Sub-Commissions?—Certainly.

435. Can you also remove a Sub-Commission from one district and send it to another district?—Yes.

436. Previous to March 1893 those powers were exercised by Mr. Wrench?—When I joined the Commission he was senior Commissioner. Arrangements in fair-rent matters went before him, but he never did anything without consulting me.

437. I suppose the late Mr. M'Carthy did nothing in that?—No, Mr. M'Carthy had nothing to say to fair rents until the two parts of the Commission were amalgamated.

438. At present you exercise the power of determining the position of the Sub-Commissioners, changing it when you think it desirable?—When I think it right to do so.

439. And also change their district?—Also change their district; yes.

440. Does any one else interfere in that business?—No; I do not think I ever consult any one; I may substantially say not. I mean when I make the arrangements I always show them to my colleagues. Practically they do not interfere.

441. You mentioned the rules. Can you kindly say, for the information of the men who are not experienced in these matters, where we

Mr. *Dillon*—continued.

can find the rules as they now are in force; the full rules?—You can find them in "Cherry."

442. The last edition of "Cherry"?—The last edition.

443. Those are the rules that are now in force?—Yes.

444. You stated that in all cases where valuation is not under 10*l.*, the claim to have a fair rent fixed must have endorsed on the back of the claim the improvements for which the tenant claims to be allowed?—Yes.

445. What is the procedure in the case of men whose holdings are valued under 10*l.*?—Under 10*l.* we do not require them to do so.

446. That is to say, without previously endorsing the improvements they can claim them in Court?—Yes, they can claim them in Court.

447. Now, I would ask, if you will kindly explain more fully than you did before, at what stage, and by whom, it is decided what improvements are to be exempted from rent?—Exempted from rent?

448. Yes; at what stage of the proceedings, and by whom?—It may be on the evidence being given in Court.

449. Is the decision there and then made and published?—I will take this example: a tenant holding under a lease for the full term of 31 years certain (I am not referring to the Ulster cases, because this has nothing to say to cases in which the Ulster custom exists) is only entitled to claim, under the statute, as improvements, reclamation of waste land, and permanent buildings, and unexhausted tillage and manures; other improvements he has no exemption from rent under the statute, if he holds under a lease for that term; consequently, if he were proving in Court fences or anything that way, naturally the Court would stop him going into the question.

450. Take an ordinary case of a tenant from year to year?—The ordinary case of a tenant from year to year in a similar way, if the improvements were made before the passing of the Act of 1870, and 20 years before the claim, he would not be entitled to claim exemption for rent, except permanent buildings and reclamation of waste lands.

451. He would be entitled to those?—He would be entitled to those.

452. What is the procedure as regards improvements?—How do you mean?

453. Will you give us a sketch of the procedure in the case of a tenant who wants to claim improvments?—He endorses them on the back of the notice; he then goes into Court to prove them in detail.

454. He has no claim until he has proved them, or so far as he has proved them?—He must prove them in Court.

455. Supposing the tenant makes a claim for improvements, and fails to prove them in Court, do the Sub-Commissioners who visit his land then inquire further into the matter?—I should say not if he has not proved anything in Court.

456. If he has not proved them in Court to the satisfaction of the Commissioners sitting in Court the Sub-Commissioners who visit his holding take no account of them?—They certainly ought not to take any account. I have seen reports of Sub-Commissioners in cases in which there was no claim for improvement, or where no improvements were proved in Court, but where they found certain improvements, then they specified them.

457. What would be the judgment of the Commission upon them?—The judgment of the Sub-Commission would be not to allow the tenant for the improvements, but the fact of those improvements appearing upon the report is of great use to us when the case comes before us on appeal.

458. I will come to that in a moment?—It is very useful to us to have the statement of the Sub-Commissioners that the improvements were there.

459. But when the tenant endeavours to prove his improvements for the purpose of getting a remission of rent, what is the procedure in Court, after the Commissioners have listened to the evidence; they express no opinion publicly as to whether he has succeeded in his proof or not?—No, not as a rule.

460. Then do they give instructions to the Sub-Commissioners who go to visit the holding, and their opinion as to whether he has succeeded in proving his improvements, and whether they are to consider his improvement in their report, and, if so, what improvements they are to consider?—No. It is the Sub-Commissioners who are sitting in Court, who inspect the holding; they are part of the Court; they and their legal chairman, the three of them, form the Court. They hear the evidence as to the improvements.

461. Yes, I understand that?—Then the two lay members of the Court, or the two agricultural members of the Court, go out to inspect the holding.

462. I understand the main point is this: does the Commission arrive jointly as a Commission at any decision with regard to improvements before the two lay Commissioners visit the holding?—I do not think so.

463. Then the two lay Commissioners go with their own opinion unformed, although they have heard the evidence?—They come back and confer with the legal chairman before they come to a decision.

464. I thought I understood that they brought back a report?—That pink report ought not to be finally filled up until they have conferred with their legal chairman and arrived at a decision.

465. The pink report is not filled up until after they have conferred with the chairman, after their return from the holding?—It ought not to be finally filled up or signed, certainly.

466. What I want to come to is this (I am not quite clear about it): on what terms or in what way do the Sub-Commissioners deal with it when they visit the holding?—They have heard the evidence.

467. Then, as a rule, do they take note of all the improvements which the tenant has attempted to establish?—They generally do, I should think, as far as I am aware; they ought to.

468. Do you think it would be their duty; it seems to be a very important thing in the proceedings?—It would be undoubtedly their duty.

469. It

Mr. *Dillon*—continued.

469. It would be their duty to value, as far as they could, all the improvements which the tenant had attempted to establish?—Certainly.

470. Then, after that, in consultation with their legal Commissioner, the Chairman, they decide which of these improvements will be allowed?—Yes.

471. And there is no further public hearing?—No, there is no public hearing.

472. When they make the order does it set forth all the improvements that they are to rely upon?—Yes, in the pink form.

473. Is that pink form the final order?—No, it is a final report. The order does not state anything as to improvements.

474. The order states nothing?—The order is merely fixing the rent.

475. But in the pink form there is a full statement of all the improvements allowed?—Yes.

476. And that can be procured?—Yes, that can be procured on payment of a shilling.

477. You told us what Sub-Commissioners are to act as valuers to the Court of Appeal?—I did.

478. You have that also in your department?—Yes.

479. You alter their district and order them back and forth according to your discretion?—I order them back and forth according to my discretion.

480. That is to say you order a man acting as court valuer back to act as a Sub-Commissioner, and *vice versâ*?—Yes. With regard to improvements I have here a note-book of one of the Sub-Commissioners. That will probably be able to tell you what is done. (*The Witness handed in the note-book.*)

481. Now coming to the procedure of the Court of Appeal, you gave an account of that procedure, but it is not quite clear to my mind whether the Court of Appeal reviews the decision of the Sub-Commissioners as to the improvements which are to be exempt from the rent; if so, on what evidence do they do it?—On the evidence that is produced before them.

482. But do they review it?—Certainly.

483. Do they review the evidence given before the Sub-Commissioners?—Certainly.

484. That is, the evidence heard in court?—The evidence heard in court.

485. The court valuers, as I understand, do not enter into the matter at all?—They ought not to make any allowance for improvements other than those proved before the Sub-Commission, but I would expect the court valuer, although he did not make any allowance for it, to note if he saw any improvements on the holdings which had not been allowed for, either in his report or in his note-book.

486. You would?—I would expect him to do so.

487. Have the court valuers got printed instructions?—No, no printed instructions.

488. Do the court valuers to the Court of Appeal go down without any instructions whatever?—They have no instructions whatever. They are the same as Sub-Commissioners. They are all practically Sub-Commissioners of experience.

489. Therefore they may have a totally different method of procedure, because now you have said that you would expect them to note on the holding any improvement which in their judgment ought to have been allowed for by the Sub-Commission?—Yes, but what I mean is this: they all proceed upon the same principle. The principle is this: the improvements they allow for are those which have been proved before and allowed for by the Sub-Commission. They would not alter the rent in consequence of any other improvements they saw, but they would put a note so as to call our attention to such improvements, and we direct the evidence to them.

490. That is a point I want to come to. You said that in your opinion a court valuer ought to note in his report any improvement which he found on the holding and which was not allowed for by the Sub-Commissioners in their judgment?—Yes.

491. Are they instructed to do so?—There are no instructions.

492. It is a matter of discretion?—It is a matter of discretion.

493. What seems strange to me is that one Court valuer may do it, and another Court valuer may not?—I think, as a matter of fact, they do do it. I know they have done it in many instances, and I think that would be the universal practice.

Mr. *Sexton.*

494. I see you have dealt with a total rental of about six millions?—Yes.

495. What is the total agricultural rent, can you say, of Ireland?—I cannot tell you.

496. Have you any means of knowing, when a case is struck out, or withdrawn, whether it is struck out, or withdrawn, because the applicant finds himself legally excluded, or whether it is for some other reason?—We have no means of knowing on the Land Commission when cases are struck out, the parties merely do not appear.

497. Can you give us a return showing precisely, for the whole number of cases dismissed, the reasons for which they were dismissed?—I cannot give you any further than I have. I handed you in a return for this year. I could get a return made out from the commencement. It would take a week or ten days to do. I could get that done, but I would not vouch for its accuracy in the County Court cases, or even in the Land Commission cases up to 1883.

498. But you will give us as good a return as you can get?—I will.

499. Can you say what part of the rental of Ireland is represented by the 6,000 cases struck out, withdrawn, or dismissed?—I have no means of knowing that.

500. Do not the originating notices show it?—You would have to count 60,000 originating notices. It would take a very long time.

501. It would approximate to one-half of the number dealt with by the Commission, would it not?—I do not know.

502. I notice that the reductions you gave under the fee-farm and long leases were heavier than those given under either the old Act of 1881, or the Leaseholders' Act of 1887; they were heavier reductions; to what are we to attribute that?—I attribute it to a certain extent to this fact, that probably a great many of these

Mr. *Sexton*—continued.

long leases were made in the very prosperous years between 1870 and 1880; and when an Act is first passed the highest rents come in at once; the same as happened in the Leaseholders Act of 1887; the average reduction in the first year, 1888, was 29·6.

503. What usually happened under the Redemption of Rent Act. Did the landlord usually agree to sell?—No; I think it is about one-fifth of the cases (about that proportion), in which he agreed to sell. The expenses of title undoubtedly are stopping selling. There must be some simplification of title in order to make it useful.

504. Usually under the Redemption of Rent Act a fair rent was fixed?—Yes.

505. As to the domestic arrangements of the Land Commission, how has it come about that the important functions with regard to Sub-Commissioners and valuers have devolved individually upon you?—When the Land Commission became amalgamated, I mean the purchase side and the fair rent side, we held a meeting and distributed our daily duties amongst ourselves.

Mr. *T. W. Russell.*

506. Under the Act of 1891?—Under the Act of 1891.

Mr. *Sexton.*

507. Who were the members of the Board at the time you held that meeting?—The present members.

508. They were all present?—They were all present.

Chairman.

509. Except Mr. O'Brien?—Mr. O'Brien was a member.

510. Mr. McCarthy instead of Mr. O'Brien?—We did not distribute our duties until we had finished the appeal cases then outstanding.

511. Pre-Junian appeals?—Pre-Junian appeals.

Mr. *Sexton.*

512. I suppose it was a unanimous arrangement?—Yes, a unanimous arrangement.

513. Do you fix the districts?—I fix the districts from time to time.

514. And alter them?—And alter them, yes, according as outstanding cases exist.

515. You map out the country?—I map out the country.

516. Do you say the Commissioners shall go to any district?—Yes.

517. Can you withdraw one from a district and send him to another?—I can, but it is very seldom done. I mean it disorganises the business to do so.

518. You have the power?—I have the power.

519. When the lay Commissioners sit without the legal Commissioner, they simply take evidence, I suppose; they never deliver judgment?—Oh, yes; they fix the rents sometimes, but as a general rule, not; but there have been instances in which they have fixed the rent. We give a special delegation then to two of them to hear the case.

Mr. *Sexton*—continued.

520. That is to say, two lay Commissioners may hear evidence?—May hear evidence.

521. Go to the farm and value it?—Go to the farm and fix the rent.

522. Make their report and fix the rent without the intervention of the legal Commissioner?—Without the intervention of the legal Commissioner. It is not usual, but owing to the necessities of business it has to be done in some instances. They are mostly gentlemen with a certain amount of legal experience gained in the ordinary cases under the Land Acts. They know the Land Acts.

523. In what proportion of cases that come before the Commissioners are there appeals?—I should think something between 20 and 25 per cent.

524. Who usually brings the appeal?—I could not say the preponderances one way or the other; it used to be the landlords, but I think it is much more even now.

525. More evenly divided between landlord and tenant?—More evenly divided.

526. In the case where there is no appeal what would you call a usual period to elapse between the originating notice and the judgment?—It has varied tremendously; now, I think, where there are only a couple of thousand or two or three thousand outstanding cases, the cases come on within the year and are decided within the year; when there were 60,000 outstanding cases it might be three or four years.

527. You are very familiar with the bitter complaints that have been made in the House as as to the length of time that has elapsed; do you think that has now diminished?—That has now diminished altogether. We try now to have a Sub-Commission visit every part of Ireland every year.

528. In the case of an appeal, what time elapses usually; is there much delay?—Not very much now; there was often two or three years previously, when there were nine or ten thousand outstanding cases.

529. I think you said that, sitting as Appeal Commissioners, Mr. Justice Bewley and yourself always sit?—We always sit; yes.

530. Are you the only two legal members of the Commission?—We are the only two who have the training of barristers. Mr. Lynch has the training of a legal official.

531. And there is a rota of the other three, who sit one by one?—One by one; yes.

532. How was that settled?—It was settled by agreement of the Commissioners.

533. At a meeting at which all were present?—At a meeting at which all were present. I think the idea was that the training of a barrister is probably the best for sifting evidence; and also that it would be a better thing to have two members of the Court always there to preserve a certain amount of continuity in the decisions.

534. Now, on the question of improvements; on the general question of the value of the holding; do you concern yourself (you or your staff) at all with questions of capital value, or do you confine yourself to questions of letting value; annual value?—I do not quite follow you there.

535. When you and your lay Commissioners

go

Mr. *Sexton*—continued.

go to a holding, or when your appeal valuers go subsequently to a holding, do they arrive at a conclusion as to the capital value at all of the holding as it stands, and of the improvements as a whole, or of the improvements ascertained to be made by the tenants or of the landlords in the holding?—I do not think they arrive at the capital value of tho holding. They value the holding; they value the land of the holding without the buildings—what is a fair letting value as it stands, with all its improvements upon it; and then they value the improvements, making a deduction.

536. That is to say, the two lay Commissioners having heard the evidence in court, inspect and then determine in concert with the chairman what improvements on the farm belong to the tenant, and then apply that to the valuation of the improvements when they reach the room?—They have heard the evidence in court as to the improvements, and they value these improvements, and then they settle with the chairman what they allow.

537. Having satisfied themselves in court what improvements belong to the tenant under the law, then they go to the farm and they first fix the annual value of the holding as it stands?—Of the holding as it stands, without buildings.

538. And then they deduct from that the annual value of the improvements which they believe belong to the tenant?—Not the annual value of the improvements, but an allowance upon the cost of the improvements.

539. An allowance; yes?—That is that burning question of Adams *v.* Dunseath?

540. Yes, quite so. Do they at all determine the annual value of the improvements made by the tenant?—Not necessarily. Of course they would have often to ascertain them in order to see whether the improvement has been effective, or how far it has been effective.

541. How far the good effects have remained?—Yes.

542. Is there any record to show what proportion the allowance made by the valuers in respect of improvements made by the tenant bears to the total value or letting value of those improvements?—No.

543. So that the operations of their minds upon that question are not recorded?—They are not recorded.

544. And it is a pure matter of conjecture, then, on the part of the parties (the landlord and the tenant) in regard to any improvements which may have been held by the tribunal to have been made by a tenant, what proportion of the annual value of them is deducted from the total annual value of the holding?—It does not appear. What has been the deduction does not appear upon the report, except as I have stated, there are one or two Commissioners who do state it. I do not know whether I have any files of Mr. O'Shaughnessy here; he generally states how much he has allowed.

545. Is there any record of the value of the improvements as a whole, without regard to the property in them?—No.

546. When the Sub-Commission delivers a judgment, what particulars does it give beyond

Mr. *Sexton*—continued.

the fair rent?—Generally none, I should think, as far as I know. In the earlier days of the Commission, when I was a Sub-Commissioner, we gave a judgment in each case, but the cases became so numerous that we merely announced: "The old rent was so-and-so; the judicial rent is so-and-so now."

547. There is a good deal then behind the scene which the parties cannot examine; that is to say, they do not know what these Sub-Commissioners hold to be the full annual value of the holding, nor do they know whether or not an allowance has been made in respect of the improvements?—They know whether or not an allowance has been made in respect of the improvements.

548. They do know?—Yes.

549. Do they know the amount of it?—They do not know the amount of it.

550. So that for all they can tell in any case the fair rent, as fixed, might be really the full annual value of the holding; they are unable to say that any material reduction has been made in respect of any improvements?—Suppose you see that 10 acres has been reclaimed, you know that a substantial thing has been done. If 100 perches of drains has been made, you can tell that the reduction is not very large.

551. If the value of a man's improvements of his holding is 20*l.*, neither the tenant nor the landlord knows whether that is the bulk sum given to it or not?—They do not know exactly, except that by looking at the pink form they can conjecture very nearly what the allowance is that has been made.

Chairman.

552. Do they, as a matter of fact, possess themselves of the pink form?—A great number do.

Mr. *Sexton.*

553. What does the pink form tell them?—What improvements are allowed.

554. The improvements are stated, but not the annual value of them?—Not the annual value of them.

555. Then the tenant knows he has got credit for certain improvements?—For certain improvements, yes.

556. But by how much that allowance has decreased the full annual value of the holding he does not know?—No; except that he can conjecture pretty well.

557. An appeal is brought, I believe, in 25 per cent. of the cases?—I am not perfectly sure. I said 20 to 25 per cent.

558. When an appeal is brought does the appellant really know anything beyond what you have told him about the fair rent?—He knows whether the rent is too high or too low in his own estimation, and he appeals on that.

559. What he has to appeal against is the judgment of the tribunal?—He also knows what improvements he has claimed which have not been allowed; he knows that.

560. He knows there is some allowance or other, but the amount of it he is unable to tell?—He knows there may be improvements which he

Mr. *Sexton*— continued.

has made which he claims, and has not been allowed; and he knows he has not been allowed those by looking at the pink report.

561. He knows whether he has or has not?—Yes.

562. Then whether he loses one-twentieth or one-fourth of those improvements he does not know; he is unable to say?—Yes; he is unable to say.

563. He has to appeal, then, against the judgment of the tribunal without knowing anything except that he thinks the rent too high?—No; he does know the improvements; he does not know how much has been allowed, but knows the actual improvements for which he has been allowed.

564. Would you say, speaking judicially, that the amount of the allowance would be a most material question?—It is a very material question.

565. Every penny of it is a penny of rent, is it not?—It is.

566. Then they have to appeal without knowledge of those particulars?—Without knowledge of that particular.

567. In the first instance, you oblige him to recite on the back of the originatiug notice the details of the improvements?—Yes.

568. And to append to each improvement the estimate of the capital value?—No, not necessarily. I mean in some cases they do, but they are allowed to put their improvements in very generally. There is not very much objection taken to them.

569. Would you say that it necessitates the employment of a solicitor and valuer in advance?—Endorsing these particulars you mean?

570. Yes, and the claims attached to them; I mean in order to enable himself to do that?—In most instances it does. In a great many instances it does.

571. It does?—No; not as filling up the schedule of improvements, it requires a man who will go and measure the improvements; a man who will be able to write properly, and make them out.

572. He wants legal help, or some other skilled help?—I do not think he wants legal help.

573. I notice these endorsements are usually in a legal hand?—When he goes to a solicitor and fills up the originating notice, he generally brings him the particulars of the improvements, and the solicitor fills them in also.

574. When you send down the appeal valuers are they instructed to proceed precisely upon the same lines as the lay Commissioners as regards full annual value and allowance for improvements?—They receive no instructions; there have been no formal instructions given either to them or to the Sub-Commissioners; but they were practically all Sub-Commissioners of experience, and they were to proceed upon similar principles.

575. Has the appeal valuer the evidence of the Court below, and the reports of the Sub-Commissioners in his hand?—He has not the evidence of the Court below; he has the report of the Sub-Commission.

Mr. *Sexton*—continued.

576. Are these several valuers instructed to report in any identical form?—Yes.

577. There is a form fixed?—Certainly.

578. May I ask the reason why the Commissioners have reserved from the parties the amount deducted for the improvements from the rent?—It was never given; they have been gradually extending the information given. There is no special reason one way or the other.

579. Are you aware of any objection in the minds of the Commissioners (first of the Sub-Commissioners) to inform the parties what allowance they have made upon the claim for improvements put before them and the judgment they have made?—I have no objection, personally, to its being done.

580. Now, may I ask you, from your experience, whether you consider the procedure of an action or suit at law appropriate to the matters to be determined under the Land Acts?—That is to say the existing machinery.

581. The whole machinery of an action at law?—I do not consider it now necessary. I consider it was a necessary procedure at the commencement, but I think the time has come to alter it now.

582. Do you think it costs too much?—I do.

583. Having regard to the relation of the Commission to the machinery?—I think it costs very much too much, both to landlord and tenant.

584. And takes too much time?—And takes too much time; it is cumbrous and costly.

585. Is not there really, when you go to the essence of the matter, a sort of routine observed by skilled persons which has little or no relation to the machinery of an action at law?—I think that any party who wishes ought to have an opportunity of having his case heard publicly in Court, but my own idea is that the public hearing in Court is not necessary in the majority of cases; and I think the procedure ought to be altered.

586. Am I right in saying that the bulk of the tenants of Ireland are valued under 10*l.* to the relief of the poor?—I should think numbers of them are.

587. The bulk of them?—A very large number.

588. Most of those that come before you now; can you tell us, from your great opportunity of knowledge, what is the usual cost to a tenant, say first, in a case where there is no appeal, secondly, in a case where there is an appeal?—In a case where there is no appeal I should say that the costs are 3*l.* or 4*l.* very often. I have no means of knowing what fees they pay to their local valuers; but I should think it would cost from 2*l.* to 4*l.*

589. On the 294,000 cases you have given, the reductions amount to a million and a quarter. Taking the average reduction at 4*l.* to each tenant, it would appear then that a year of the benefit is swallowed up by the cost of the action, even where there is no appeal?—There is no doubt that in small cases the costs bear very heavily upon them.

590. When there is an appeal, what would you say is the cost to the tenant?—Here is a memorandum I got made out by our solicitor; he takes the

Mr. *Sexton*—continued.

the costs. He says in cases where the rent does not exceed 5*l.*, about 2*l.* with one valuer; 2*l.* 15*s.* with two valuers; and, if the tenant employs counsel also, 4*l.*; and so on. There is a scale going up. That is his experience.

591. There are the travelling expenses of the tenant and his witnesses (skilled and unskilled) to the seat of your Commission?—Yes; to wherever we are sitting.

Chairman.

592. Will you put that document in?—Yes, certainly. (*The document was handed in.*)

Mr. *Sexton.*

593. Is it not very likely that the gain of the tenant for three or four years is swallowed up in the case of an appeal?—It undoubtedly bears very heavily upon them, extremely heavily. I cannot go further than that.

594. Would you be disposed to suggest to the Committee the substitution of any cheaper and more rapid process?—I would, yes.

595. I will not trouble you to go into detail at present upon that point?—I have had made out what my ideas are upon the alteration of the procedure.

596. What record is kept in the office of the judgments of the Commission?—In the first place the file, that is, the document Mr. Dillon has, and that file in each case is kept with the records, and, in addition, the judgments are entered in a judgment book.

597. The judgments also of the Sub-Commissioners; are they recorded in the office?—Yes, in the files they are.

598. Simply the fair rent?—Oh, simply the fair rent; or if they dismiss a case on the ground of its being pasture holding or town park.

599. In the case of exclusion?—Yes.

600. In the case of an adjudication, is the record in your office a simple record of the fixing of the fair rent?—The actual order signed by the Sub Commission is in the office.

601. It tells no more than that?—It tells no more than that except in special cases. For example, it tells whether it is fixed on the basis of free turbary outside the holding, or whether, in the case of a fee-farm grant, if there is a tithe rent-charge, it is fixed upon the basis of that tithe rent-charge being continued to be paid by the grantee. No special condition will appear.

602. Does it record any dissent?—The judgment itself does not, but there is a document before it called the "Minute of Order" that does.

603. In regard to the Commissioners' judgments, are they reported by the shorthand writer where you are sitting as Commissioners?—Oh, yes. Our evidence is reported by the shorthand writer, and I think he takes a note of the judgment also.

604. So that the Committee, if they wish, in regard to any case upon which the Chief Commission has adjudicated, can have, I presume, a record of the utterances of the Commissioners?—Yes, I think so.

605. Especially in cases of dissent?—Yes.

Mr. *T. W. Russell.*

606. You are an Assistant legal Commissioner from the commencement of the Act in 1881?—Not exactly; from November 1881.

607. November. 1881?—Yes.

608. You have handed in the forms that have been in operation for the whole period?—I think so, yes.

609. Were there any maps used there between 1881 and 1886; maps of the farms?—No, no maps of the farms.

610. When there were no maps used, who fixed the boundaries of the farms on which the Sub-Commissioners went?—I do not quite understand what you mean by "who fixed the boundaries of the farms." I can tell you all about this, because when I was Assistant Commissioner I visited every farm myself.

611. It was rather a haphazard business, was it not?—It was very rapid business.

612. Will you not go further?—No, I will not say it was haphazard.

613. From 1881 to 1886 there were no maps, at all events, used on the holdings?—There were no maps used on the holdings Perhaps I am wrong. There were no maps made by the Sub-Commissioners, or marked by them, but in most places the tenants themselves produced maps for the use of the Sub-Commissioners, in very many places certainly, in 1881 to 1882.

614. I suppose you would not say that the method of fixing rents between 1881 and 1886 was at all as scientific as it is now?—Certainly not.

615. It was more loose?—It was more rapid and loose.

616. Now, take the Commissioners who went to Ulster, for example, during that period; would you say they were men who had any knowledge of the Ulster custom?—I can only speak of the two who were with me; neither of them came from Ulster.

617. I do not wish to say it in any offensive way, but do you think that a Leinster or Munster farmer brought in to value Ulster farms would know anything about the Ulster custom?—Not until he heard about it.

618. Would a gentleman going from the south of Ireland to value an Ulster farm as a Sub-Commissioner under the Land Act have any knowledge of the Ulster custom?—Not unless he studied the question.

619. It is not a very interesting question to study, is it?—It is a very difficult question.

620. It is a very difficult question, and we may take it that they did not study it?—That I do not know; do not take me as saying that.

621. At all events, now, in allocating the Commissioners, I understand, you have sent Ulster men to Ulster?—To a very large extent, as far as practicable.

622. And that is one of the reasons why they have been sent, because of their knowledge of the Ulster custom?—Yes.

623. Now, take the question of appeals. Is it the fact that one appeal valuer can override two Sub-Commissioners, although they both belong to the same class?—It is not a question of that kind. There is no overriding of one by the

Mr. *T. W. Russell*—continued.

the other. The appeal valuer simply makes a report for the information of the court. The court are not bound to act upon his report at all.

624. I will put it in this way to you: you have told us the report of the appeal valuer is sent to the parties?—Yes.

625. Now, if the parties agree, is the appeal heard; does it go any further?—No; the appeal is not heard.

626. Very well; then, is it not possible in that case that the report of the one valuer should overrule two Sub-Commissioners?—If the parties assent to it, certainly it is.

627. Now, come to the court judge valuers; who appoints these valuers?—The Land Commission, with the sanction of the Lord Lieutenant.

628. I mean the county court valuer?—The county court valuer. Here is the list that has been from time to time used, with the names added on to it. It was fixed in 1887. They were chosen by the Land Commission, with the sanction of the Lord Lieutenant of the day; and from that list, or so many of them as are now available, the valuers are chosen. Some of those are dead now; some are employed elsewhere.

629. I know all that, but what I want to get at is this: are these men appointed by the County Court Judge?—The County Court Judge can select whom he chooses out of that list. If he selects anyone outside the list, the Treasury will not pay him.

630. That settles it. I do not suppose the County Court Judge will pay them. As a mere matter of fact, what is the procedure in fixing rents before County Court Judges, apart from questions of law and questions of value; he decides entirely on the value of evidence?—I really cannot state what is in the mind of each County Court Judge. I can only state what I did myself when I was a County Court Judge. I never departed very far from my valuer. I sometimes went above him, and I often went below him, and I took the evidence on each side. I insisted upon and tried to get as much evidence as I could, and formed my own opinion; but the most valuable thing before me was the report of the independent officer.

631. Mr. Healy elicited the fact from you that the parties, in the early fixtures, at all events, had very great cause of complaint, because of delay; he gave the case of one tenant that had been delayed five years?—Yes.

632. Now that was a real hardship in the early period of the Act, was it not?—In the earlier periods of the Act, when the rent did not run until the gale day after the fixing of the rent, that would be a dreadful hardship.

633. That is cured by the Act of 1887?—That is cured by the Act of 1887.

634. But the earlier fixtures had a real grievance on that account?—I cannot say whether there was any such case in the earlier times. I do not know what the delays then were, because the time when there was a great influx of business and tremendous delays was the coming in of the Act of 1887, which let in all the leaseholders, coupled with the depression of prices, which brought in such a very large number of other tenants in Ireland at the time.

635. At all events the evil is cured?—The evil is cured.

636. The rent now dates from the gale day after the service of the originating notice?—Yes.

637. Now, coming to long leaseholders and fee-farm grant cases, can you tell us how many there are who have served notice under the Redemption of Rent Act?—I can tell you up to last year. Unfortunately, we have not had tables made up since. I think there are about 600 or 700.

638. Can you tell me what class of cases these are; are they mainly substantial farms?—A good number of them are very substantial.

639. With large interests?—Oh, I should think with large interests; mostly with large interests. In the north of Ireland there have been a good number of small ones.

640. In ordinary purchase cases what does the tenant purchase; he purchases the landlord's interest, does not he?—He agrees with the landlord for a price.

641. Quite so, but he is not expected to purchase his own interest; there are two of them; there is a dual ownership in the land?—We have nothing to say to that in an ordinary purchase case; we have merely to see, when the landlord and tenant agree upon the amount of the purchase, whether the holding, including the tenant's interest, is security for the advance. We do not go into the question of what is purchased.

642. There is no doubt about what is purchased under the Rent Redemption Act, is there; that is a fee-farm grant, is it not?—In the case of a fee-farm grant he gets no credit for his improvements.

643. That is to say, in the case which you have quoted, Mollan and Kieran?—Mollan and Kieran is in reference to fair rent, and that other case (I do not recollect the name of it now) that I quoted is in reference to where the improvements are taken into consideration as being part of the security of the rent he is purchasing; it does not come on the fair rent side.

644. I would not be wrong in saying, would I, that in the Keran case there were something like 1,000 improvements admitted?—I do not recollect really the improvements.

645. At all events, he has to purchase the improvements?—No; in Keran's case there was no purchase; it was a question of fixing a fair rent.

646. It is fixed upon the improvements?—It is fixed upon the buildings he put up himself. My recollection is that there were buildings as well.

Friday, 4th May 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Leese.
Mr. Carson.	Mr. Macartney.
Mr. Clancy.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. Robert Reid.
Mr. Fuller.	Mr. T. W. Russell.
Mr. T. M. Healy.	Mr. Sexton.
Mr. W. Kenny.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. W. F. BAILEY, called in; and Examined.

Chairman.

647. YOU are a barrister-at-law, are you not?—Yes.

648. Have you been in practice?—Yes; I practised as a member of the Munster Circuit.

649. Since when?—Since 1881 up to the time of my appointment as a legal Assistant Commissioner.

650. Then you were secretary to the Royal Commission on Irish Public Works; what is called the Allport Commission?—Yes.

651. When were you appointed legal Assistant Land Commissioner?—In November 1887.

652. Will you tell us where you have acted in that capacity?—I acted at first in the counties of Kerry, Waterford, and Tipperary.

653. At first you acted in the counties of Kerry, Waterford, and Tipperary?—At first.

654. Then afterwards where did you act?—Afterwards I acted in Meath, Louth, Longford, Roscommon, Leitrim, Cavan, Fermanagh, Monaghan, Armagh, Down, and Antrim.

655. That is to say, latterly you have been mainly in Ulster?—Ulster mainly.

656. You are not an Ulster man yourself, are you?—No, I am not an Ulster man.

657. Mr. Commissioner Fitzgerald has told us what the procedure is in outline; we shall ask you to fill in the particulars; will you tell us what the process is?—Well, the process as regards the fixing of fair rents before a Sub-Commission is this: in the first place a list of cases is sent down to each Sub-Commission by the Chief Commission.

658. A Sub-Commission consists of two lay Commissioners, and yourself as legal chairman?—And myself as legal chairman; and the powers of the Chief Commission are delegated to us; all the powers which enable us to hear and decide each case, and our orders are final with respect to each case unless appealed against.

659. How do you call the cases?—The cases when sent to us are notified; the notification is sent to the parties where we mean to sit for the hearing of each case, and we try to arrange the place of hearing so as to make it as convenient as possible for the parties before us.

Chairman—continued.

660. Do you go by estates?—We hear the cases, as a rule, by estates; that is to say, we take all the cases on the one estate consecutively. We call the case in court, and if it is an application by the tenant to have the rent fixed, we begin by verifying the statements that he has made on his originating notice; that is, the area, rent, and valuation of the holding.

661. How do you verify those statements?—If both parties in court agree that the area and the rent are correct, of course that concludes the matter. If there is any dispute as to the area, that is the first question that we must hear and determine; and frequently we have a great deal of trouble in deciding and settling those questions of area; all manner of questions may arise with regard to whether certain portions of bog are included in the holding or not, and questions often arise as to whether outlying pieces belong to it or belong to another holding, or to the same tenant. All these questions have to be decided in the first instance.

662. Then, of course, the tenant is sworn?—The tenant is sworn. All evidence is given on oath.

663. Then, after you have gone into changes in area, do you ascertain the changes of rent?—The history of the holding is then gone into; that is, we find out when the tenant, or his predecessors in title, became the tenant of the holding, if such evidence can be obtained, and the various changes in rent and other matters which will throw light upon it.

664. In "other matters" you include charges upon the holding?—Yes; we have to take evidence with regard to all matters that affect the value of the holding, such as drainage charges, which, of course, are very important in many parts of Ireland where there have been large arterial drainage works carried out, and where the costs

Chairman—continued.

of those works are charged on the lands. We have to decide all these questions and allocate the portions of them that are properly chargeable as against the rent.

665. Then, as to rates and taxes what do you say?—Rates and taxes have also to be considered as outgoings which have to be paid by the tenant.

666. Tithe rent-charges?—Tithe rent-charges also.

667. And land improvement charges?—And land improvement charges; Board of Works charges.

668. Then what do you do; what is the next question?—Having heard the evidence of the tenant, we then hear any evidence he wishes to produce, as his evidence of value. As a rule, in the poorer cases in the West and Midland parts of Ireland, the tenant employs the same man as valuer and as surveyor; each tenant, as a rule, gives us evidence by a surveyor of the measurements of his improvements.

669. First of all, I suppose, he makes his own statement, does not he?—He makes his own statement.

670. As to his improvements?—Proving his improvements. He then gives us evidence by the surveyor as to the extent of these improvements; that is, the number of acres reclaimed, the number of perches of drains made, the number of fences made, and so on. Having got that evidence from the surveyor and the valuation of the tenant (if he wishes to put in a valuation) and any other evidence he wishes to offer, we then take the evidence of the landlord.

671. But the tenant and his valuers, I suppose, are cross-examined by the landlord?—He and his valuers are cross-examined by the landlord, or the landlord's representative, who may seek to establish his claim in some of these cases to the improvements that the tenant has made.

672. But he is cross-examined upon his allegations of improvement?—Yes, quite so.

673. Then, after you have done with the tenant and his valuer there, what next happens?—We then, having completed the evidence of the tenant, take the evidence of the landlord. As a rule the landlord's evidence consists of a valuation; that is, he employs and examines a professional valuer who has gone over the land and puts in his valuation.

674. The landlord first of all sets up the valuation?—Quite so.

675. Then he produces his valuer to support that valuation?—He sets up the valuation by producing the valuer.

676. Do you have other witnesses?—In cases in which any important question of law may arise, of course, a large number of witnesses are very frequently examined. If questions arise which concern the different classes of improvements, or which concern various other matters that the landlord thinks will affect the rent, he gives evidence in support of his contention; and in large and important cases, where questions of grazing lettings, pasture holdings, town parks arise, very frequently we have a large number of witnesses examined on each side; but in the smaller cases, or the less important cases, where no question of law arises, as a rule, not more than one witness is examined on either side.

Chairman—continued.

677. You talk of questions of law; suppose one of those questions of law arises during the hearing which you are now describing, how do you deal with such a point?—When the evidence is given, and the parties are heard in support of their contentions, if the case is clear the chairman of the Sub-Commission decides the point then and there (he rules on it); if it is a question of improvements, he then and there rules whether the improvements are to be credited to the tenant or to the landlord.

678. You (the chairman) do this independently of the two lay Commissioners?—Well, on questions of law the chairman practically rules alone; for, of course, those questions turn very frequently on intricate questions of construction, and questions governed by previous decisions.

679. Questions of law as to whether the tenant is entitled to apply at all, or is entitled to claim the improvement; those you decide for yourself?—Quite so.

680. And the other two lay Commissioners have nothing to do with it?—They take the ruling of the chairman; and that, of course, applies also to the question whether the tenant has a status as tenant to begin with. The first question to consider is the status of the tenant.

681. Then, when the sitting is over, when that preliminary sitting is over, what do you do, what happens next?—When I have, as chairman, completed the hearing of the cases listed for that occasion I proceed to another pair of Assistant Commissioners, and sit with them. While I am with the other Commissioners the two who have heard the previous list with me occupy themselves in inspecting the holdings with respect to which we have taken evidence.

682. We are now following the course of a set of cases?—We are now following the cases.

683. You, the legal chairman, have gone away?—Yes.

684. Then the two lay Commissioners with whom you have been sitting proceed to inspect each holding on which a rent is to be fixed?—Quite so.

685. Do you give them any directions?—Well, with respect to the various questions of law that may arise as to the ownership of improvements, of course, I have previously ruled which of those improvements are to be taken into account in favour of landlord or tenant respectively.

686. Do you give them a general rule applying to the particular case?—Well, I would rather say a particular ruling on each particular case.

687. A particular ruling on each particular case?—That is so.

688. Then, armed with that they go on to the farm, the holding?—They go on to the farm.

689. So far as you know, what is their procedure then?—They give notice to the landlord and tenant respectively (some days' notice) that they mean to inspect the farm on a certain day. They arrive there on that day and are met by the tenant and by a representative of the landlord.

Chairman—continued.

lord. Accompanied by these they go over the holding field by field; they make a valuation of each field and they make a map; that is, on the Ordnance sheet they mark the boundaries of the holding and the classification of the soil as it appears to them.

690. Then they also examine the improvements, I take it?—And they also examine the improvements, and the various other circumstances with regard to which evidence was given, such as the water supply, the elevation of the holding, its aspect, the various circumstances that may affect its value.

691. The turbary?—The turbary rights; if it is near the sea-shore its sea-weed rights; any rights of commonage or of mountain grazing that may attach to it.

692. Do the two lay Commissioners always come to an agreement as to the valuation?—Oh, no.

693. They do not?—They do not. They make each an independent valuation, of course, as a rule, consulting with one another on the land, but if they do not happen to agree on the valuation of the land, each makes his own valuation in his own book.

694. In most cases do they agree or not; what would you say?—It is difficult to say; some pairs of Commissioners will agree more frequently than others.

695. Then they draw up the report which we heard of on Tuesday?—Quite so.

696. With the map?—With the map; and I may incidentally say that the map is a matter of very great importance in this respect, that, but for the map, it would be very difficult to really know what was the actual holding on which the rent was fixed. I had a case in Armagh last week where we were for nearly two hours trying to decide whether a portion of the holding before us had had a rent fixed on it already. It was a case in which the rent had been fixed of a neighbouring holding in 1882. There were no maps provided at that time, and it was impossible for us to find out whether a portion of the holdings had not already been subjected to a judicial rent.

Mr. *Carson.*

697. Have you ever known a case where the Commissioners fixed the rent on a wrong holding or on a wrong portion of a holding?—That has happened in none of my cases that I know of, but I believe there are allegations to that effect.

Chairman.

698. Especially in the early days?—Especially in the early days when there were no maps. The making of the map, of course, excludes that possibility.

Mr. *T. W. Russell.*

699. The maps began in 1886, did they not?—The maps began about 1887, I believe.

Mr. *Carson.*

700. Do these maps cost anything?—No; very little. The Ordnance Office supplies them at cost rate, and they are very cheap.

Chairman.

701. They are taken off the Ordnance sheet?—Yes; in fact it is the Ordnance sheet. The Ordnance sheets of the union are sent down to the Sub-Commission, and they have all the sheets of the union with them, and they take out the sheet with them on the holding, and mark the holding themselves.

Mr. *Carson.*

702. What is the scale of the map?—It is a 6-inch sheet.

Chairman.

703. Then, when you have got the report drawn up with the map, you, the legal chairman, return, I suppose; you have a consultation with the two lay Commissioners and consider the report?—Yes; the chairman returns to the lay Commissioners, and he has a consultation with them as to the various circumstances, and as to the evidence on which the rent is to be fixed.

704. That is to say, you have the report on the table?—We have the report.

705. And the evidence is gone over?—Quite so.

706. Then each of them submits, if there be a difference of opinion, his individual valuation?—He submits his individual valuation, then a consultation is held. If there is very much difference between the lay Commissioners, of course we have to consider where the difference arose, and estimate by the light of the evidence that has been given in court, and what other evidence we can appeal to, what should be the fair rent.

Mr. *Carson.*

707. May I ask you, when you are considering the reports in that way, do you consider prices or stock, or the carrying powers of the farm; or do you merely take the experience of these men in going out and looking at the land?—That depends.

Chairman.

708. Then the principal questions of law, I presume, that arise at this stage are as to improvement, and as to whether the tenant is one of those persons who is entitled to have a fair rent fixed?—And as to whether he has a title to the holding at all; we have to begin with that, as to whether he is the rightful party entitled to apply.

709. Then other questions arise, and so on?—Yes; questions as regards the area of the holding. In some parts of Ireland very important questions arise with respect to additions to the holding by way of encroachment. In some counties, such as Longford, Leitrim, and parts of Cavan, where a great deal of bog has been reclaimed by the tenant, questions arise as to the bog that has been cut away, and how far he has added that into the area of the holding, by virtue of the Statute of Limitations, or otherwise.

710. Then rights of turbary are examined, or reconsidered again, and so on?—Quite so.

Mr. *Carson.*

711. They are very unsatisfactory, are not they?—In some parts of Ireland the turbary question is one of vital importance.

712. Are not the Acts very deficient as regards turbary; that is one of the things, I think, we will have to go into; is not that so?—Yes.

713. In many instances the landlord segregates the turbary from the holding, does he not?—Certainly.

714. And you have no jurisdiction?—We have no jurisdiction; we fix the rent in the ordinary way as without turbary. Where there is turbary right attached to the holding, we take that into account in fixing the rent.

715. In a case where the landlord tries to separate the turbary from the holding, it leaves the turbary outside your jurisdiction?—It does.

716. And leaves the landlord full control over the turbary?—Quite so; and we have no power to make any order giving the turbary to the tenant.

Chairman.

717. You said that the incidence of taxation was one of the points you had to consider?—Yes; we have to consider how and to what extent the tenant is liable for the local rates and taxes.

718. The county cess is one of them, of course?—The county cess is one of the most important.

719. Changes have been made in the county cess, have not they?—Yes; of course important questions arise under leases and tenancies as to the point of time at which they were created, which will alter the incidence. For example, in the case of tenancies created before 1870 the occupier is primarily liable to the rate; in the case where new tenancies have been created since 1870 the tenant is entitled to deduct half of the poundage from the landlord in paying his rent; and in the case of holdings of the value of under 4*l.* he is entitled to deduct the entire.

720. That is to say, before 1870, the whole of the cess fell on the occupier?—The whole of the cess fell on the occupier.

721. Since 1870, if the holding is over 4*l.*, half falls on the occupier and half on the landlord?—Yes.

722. And if the value is below 4*l.* it all falls upon the landlord?—Quite so. Of course there are a large number of variations of that by contract or otherwise, which we have to take into account.

Mr. *Sexton.*

723. If the tenancy is over 4*l.*, must not the new tenancy have been created since 1870 to entitle him to get half the rate?—Quite so.

724. And are not these cases very rare?—They are comparatively rare. Of course, important questions arise with us as to whether such a change has taken place in the tenancy as to make it a new tenancy.

Mr. *Carson.*

725. In the case of a tenancy created since 1870, can the tenant contract to pay the whole of the cess in a holding under 150*l.*?—He can; he has the right to contract to pay the entire county cess.

Mr. *Carson*—continued.

726. Is not that also so in the case of a person who becomes tenant for the first time after the passing of the Act of 1881?—It is. It has been so held. I can give you the reference to the case. It has been decided that the 22nd section of the Act of 1881 does not prevent him contracting out. That was decided in the case of Cagney *v.* Roche, which is reported in 30, Law Reports, Ireland, page 108.

Chairman.

727. What point does Cagney *v.* Roche establish?—It decided that a tenant can contract to pay the entire county cess although his tenancy was created since 1870.

728. The law may be varied then by covenant?—Quite so; and we have to consider each case.

729. You said, in answer to Mr. Carson, that you had to consider questions of title, and other important legal matters?—Yes.

730. What is the scope of your legal jurisdiction?—We have jurisdiction to decide all questions between landlord and tenant that arise on the hearing of an application to fix fair rent; we have jurisdiction to consider every question with regard to the status or right of the tenant to apply, and to deal with all questions as regards the exclusions from the Act, and we have also jurisdiction to make orders which will complete the title of the tenant to his tenancy, such as orders for limited administration, orders appointing guardians to minors, and so forth.

731. May we put it broadly thus (we shall have to go into some of these details afterwards), that, subject to appeal, the field of your decisions is just the same as the field of the decisions of the Chief Commissioners themselves?—Quite so.

732. That is so?—That is so.

733. Subject to appeal?—Yes.

734. And if there is no appeal your order upon any of these disputed legal points is final?—Is final; that is so.

Mr. *Carson.*

735. You have the delegation of all their powers?—We have all their powers except the power of hearing appeals.

Chairman.

736. I do not want to ask you too wide a question, but, having gone through this process in fixing a fair rent, up to this point, when you have made what may be a final order, do you think the present system of fixing judicial rents is as fair as anything that could be devised?—Well, that is my conclusion after some years' experience. It seems to me to be the only possible method that will enable the circumstances of each individual case to be gone into, and it provides a tribunal, practically at the door of the parties, to which they can come at very little expense and have their cases heard, and give all the evidence that they wish, and at the same time certain members of the court actually see the subject-matter in dispute; they visit it themselves with the light of evidence they have taken to direct them.

737. That is to say, that the present system requires that each holding should be personally inspected

Chairman—continued.

inspected by two lay Commissioners and valued by them?—And valued by them.

738. And then and there you have to see that the law is properly applied, and that the case is fairly considered?—That the law is properly applied; quite so.

Mr. *Sexton.*

739. That does not hold good in the case of an appeal, does it?—No, in the case of an appeal, of course, it is different. There the court has to be directed, not by their own inspection but by the inspection of others.

Chairman.

740. That is your general view, we may take it. Now, I am afraid we must take you on to a much thornier ground, that is this: we will ask you if you will, point by point, explain to the Committee what are the legal disputable issues that generally or frequently arise; and, of course, we must begin with the law as to improvements, and the famous case of which we have all heard so much, Adams *v.* Dunseath. First of all, will you tell the Committee what the provision of the Act of 1881 is with respect to improvements?—I shall.

Mr. *Carson.*

741. At the same time that you are fixing this fair rent, do you have sometimes applications before you to fix the value of the tenancy?—Very frequently.

742. Under the first section?—No.

743. Under what section?—Under the eighth section.

744. Is that done on a form like the fair rent form?—It is.

745. That is, as I understand it, when the tenant serves his notice to fix a fair rent, the landlord serves a cross notice to have the value of the tenancy fixed at the same time?—Quite so.

746. And if at any time the tenant wishes to sell the holding the landlord has the right of pre-emption?—Yes, at the rent we fix during the statutory term.

747. And this is all done as part of the one hearing?—It is all done as part of the one hearing.

Chairman.

748. Now, what is the section about improvements?—The section of the Act of 1881 is the 9th sub-section of the eighth section; in Cherry's book it is on page 246.

749. "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessor in title"?—Yes, that is the general provision of the Act of 1881.

750. Before going to "improvements," will you tell us on what principle you apply the first sub-section of the 8th section; it is a general direction as to determining the fair rent?—Yes.

751. The only direction that I can see in the section is that the court is to hear the parties, and to have regard "to the interest of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district." Can you tell us what principle you apply in interpreting those words, those three lines?—Well, since the case of Adams *v.* Dunseath, the practice of the Land Commission has been to read that first sub-section by the light of the decision on the ninth sub-section of the same section; so, in fact, we read that first sub-section also by the light of the decision in Adams *v.* Dunseath.

752. How is this sub-section affected by the decision in Adams *v.* Dunseath; what light does Adams *v.* Dunseath shed upon it?—The case of Adams *v.* Dunseath was taken in the first year of the Land Act to the Court of Appeal; it was taken to the Court of Appeal on several points, five principal points, and these points practically arise on the interpretation of that ninth sub-section.

753. There were five questions of law?—Five questions of law were ruled on by the judges.

754. Will you tell us what the five questions were?—The first of those was a question as to the meaning of the word "improvements." "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements." The question decided by the court in Adams *v.* Dunseath was this: they decided unanimously that the meaning to be attached to the word "improvements" was to be the same meaning as that given to it in the 70th section of the Act of 1870. You will find that on page 200 in Cherry's book.

Mr. *Sexton.*

755. Will you read it, please?—That definition is that "The term 'improvements' shall mean in relation to a holding, (1) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also (2) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding." That definition was held to apply.

Mr. *T. M. Healy.*

756. Is not that modified by another section, again, of the Act of 1870, about the number of years and so on?—You are quite right; I shall come to that.

Chairman.

757. That is another point?—Yes; the meaning of the word "improvements" is the meaning given there, which, of course, as can be easily seen, decides that the compensation, or the allowance rather, to be made to the tenant in respect of any improvement is the cost of the work done, and not any of the increased letting value over and above that cost.

Mr. *Carson.*

758. Unearned increment?—Unearned increment is excluded.

759. That

Chairman.

759. That is to say, the result of the decision on this one point, the meaning of the word "improvements," was that the cost was to be allowed to the tenant, but none of the increased letting value?—Over and above the cost.

760. That is, none of the value arising from a certain improvement, no inherent capabilities of the soil?—None of the inherent capabilities of the soil.

Mr. *Sexton.*

761. Before you pass from that, I should like to ask whether the decision of the judges in that case attributing to the word "improvements" in the Act of 1881 the meaning stated in the Act of 1870 was due to the paragraph at the end of Section 57 of the Act of 1881, which says, "Any words or expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act"?—Yes; that was the ground of the decision, and it was decided unanimously on that final paragraph of Section 57.

Chairman.

762. Now, tell us the second point decided in Adams *v.* Dunseath; the first is the meaning of the word "improvement"?—Yes; the second matter decided in Adams *v.* Dunseath was the meaning of the words "predecessors in title" in that same 9th sub-section of the 8th section, "improvements made by the tenant or his predecessors in title." The question that was argued on behalf of the landlord was that the words "predecessors in title" should have the restricted meaning that had been given to them in a previous case; the case of Holt *v.* Harberton, which decided that a predecessor in title meant a predecessor in the same title; that is, a predecessor under the same lease or the same contract of tenancy; but the 7th section of the Act of 1881 widened that meaning, and provided that "a tenant on quitting the holding of which he is tenant shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870, by reason only of the determination, by surrender or otherwise, of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy." That wider meaning by the decision of the judges in Adams *v.* Dunseath was given to the words "predecessors in title" in the 9th sub-section of Section 8.

Mr. *T. W. Russell.*

763. What did they make it to be?—They extended it.

764. What did it come out at?—It meant this, that a tenant in claiming credit for improvements was not debarred from his claim merely because of a break in the tenancy; as, for example, by turning a yearly tenancy into a leasehold.

Mr. *Carson.*

765. Is it not very well put in three lines of a decision quoted on page 243 of "Cherry"?—Yes.

Mr. *T. W. Russell.*

766. A break in the tenancy is held not to bar the claim?—It is held not to bar the claim.

Mr. *Carson.*

767. Is not this the construction put upon it: "The old strict technical interpretation, requiring the 'predecessor in title' to be predecessor in the same title must be rejected, and the expression be taken to be here used by the Legislature in a less technical and wider sense, as simply denoting a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they may have undergone"?—Yes.

768. That is, where it goes on from one to the other?—Yes.

Chairman.

769. That was not a unanimous decision, was it?—No; that was held by four judges as against three. There were seven judges in Adams *v.* Dunseath; four of them held that construction; the other three were in favour of the narrow construction of Holt *v.* Harberton.

770. In the other case, too, did the court agree; was it divided?—It was unanimous upon the first point.

Mr. *Carson.*

771. But I suppose the Sub-Commissioners have since followed the decision of the majority?—Oh, yes.

Mr. *Sexton.*

772. Could you give us the names of the judges?—The judges who decided in favour of the wider construction were the Lord Chancellor Law; Sullivan, the Master of the Rolls; Palles, the Chief Baron; and Fitzgibbon, Lord Justice.

773. Who were the three dissentients?—Chief Justice Morris, Lord Chief Justice May, and Lord Justice Deasy.

Chairman.

774. Will you now give us the third point?—The third point, which in some respects is the one that concerns the greater number of cases, is whether the provisions, practically, of Section 4 of the Act of 1870 (which governed the granting compensation to a tenant for his improvements on leaving his holding) should apply to a claim by the tenant applying to have a fair rent fixed.

775. Would you explain that a little?—The Act of 1870, which was an Act that provided for the granting of compensation to tenants on quitting their holdings for improvements made by them on the holdings, was governed by the provisions of the 4th section of the Act of 1870, and that section contains a number of provisoes and restrictions on the claim of the tenant to get compensation on quitting his holding. The Court of Appeal in Adams *v.* Dunseath decided that those restrictions and provisoes should also apply to a tenant's improvements when a fair rent was being fixed.

776. You

Mr. *T. W. Russell.*

776. You mean those restrictions contained in the 4th section of the Act of 1870 ?—In the 4th section of the Act of 1870.

Chairman.

777. The restrictions upon the claim for compensation were by the decision in Adams *v.* Dunseath extended to fair rent claims, were they ?—They were extended to rent claims.

Mr. *Sexton.*

778. On what principle was that done ?—I will tell you.

Mr. *Carson.*

779. Were they unanimous on that ?—No; they were all unanimous but for Law ; the Lord Chancellor, he dissented.

Mr. *Sexton.*

780. How did it come that the rule which the legislature intended to govern compensation for improvements (the capital value of them) in the case of the tenant quitting his holding, applied to what appears to be the different case of a tenant not quitting his holding but desiring to be exempt from rent for improvements made by him. Do I correctly state the difference?—Yes, you do. They decided it upon the principle that as the word "improvements" had the same definition in both Acts the principle that governed the claim to get a return for his improvements in the one case should also apply to his claim to be exempted from rent on those improvements in the other ; in fact they held that the right was practically identical, the right to get compensation on quitting a holding, and the right to be allowed exemption on getting a rent fixed.

781. Was that due to the words at the end of Section 57 ?—That was, of course, one of the grounds on which they based their decision.

Mr. *T. W. Russell.*

782. Was that unanimous ?—No, the Lord Chancellor Law dissented.

Mr. *Sexton.*

783. I read these words at the end of Section 57 : "The landlord and tenant (Ireland) Act, 1870, except in so far as the same is expressly altered or varied by this Act, or is inconsistent therewith, and this Act shall be construed together as one Act" ?—Yes.

784. Did that bear upon the question ?—It did.

Chairman.

785. Now this important part of the decision affected leaseholders, yearly tenants, and fee-farm grantees in different ways ; will you specify to us how it affected, first of all, yearly tenancies ? —I shall.

786. Will you tell us, under the construction, in Adams *v.* Dunseath, of this long proviso, what improvements are allowed to the tenant ?—In respect of any improvement made before the passing of the Act of 1870, and 20 years before the claim for compensation ; he can only claim compensation for improvements in respect of permanent buildings and reclamation of waste lands ; that is, no improvements except permanent buildings and reclamation of waste lands are allowed to the tenant if they are more than 20 years old.

Chairman – continued.

787. That is another way of putting it. The claim for exemption of rent on improvements was limited to 20 years, except in the case of permanent buildings, and the reclamation of waste lands ?—Yes.

788. In other words you will follow the section ?—Of course I can read the section.

Mr. *Sexton.*

789. You can explain it ?—In the case of leasehold, and yearly tenancies, where improvements that are claimed were made under a written contract, the 20 years rule that I have mentioned applies.

Chairman.

790. Twenty years limitation of claim ?—The 20 years limitation of the claim applies, and also improvements are subjected to rent which are made under a contract for valuable consideration ; this has been held to include cases where a tenant covenanted to make improvements under his lease, that is, where the lease contained a covenant that the tenant was to reclaim so much land, make so many drains, or build a house, the fact of his having made them under the covenant is considered valuable consideration ; and he has to pay rent on those improvement made under that covenant.

Mr. *Sexton.*

791. The covenant being specific ? — The covenant being specific.

Mr. *Carson.*

792. That is, the covenant is looked upon as being a consideration ?—The covenant is looked upon as being a consideration.

Mr. *Kenny.*

793. And, probably, a lower rent is paid in consequence ? — That is not necessarily so. Thirdly, improvements are included in the rent where the right to claim compensation is excluded under the lease, if the lease was made before 1870, and in the case of contracts made after 1870, where the valuation of the holding is over 50*l.*, that is, if the lease excludes the right to claim compensation on quitting the holding the tenant is debarred from being exempted from rent on any of the improvements he makes under that lease.

Mr. *Carson.*

794. Do you mean to say that if the tenant cannot claim for improvements "then he would have to pay a rent on those improvements" ?—Quite so.

Mr. *T. W. Russell.*

795. Let us make that clear. Supposing the lease expires and the tenant has covenanted not to claim for improvements on quitting his holding, supposing he does not quit his holding and that a new arrangement is made, am I to understand that that tenant, not quitting his holding, but being subject to the new arrangement, is liable to have rent put on every farthing he has spent during

Mr. *T. W. Russell* —continued.

during his previous tenancy?—Yes. This is governed by the case of O'Neil *v.* Cooper, which is not reported.

Mr. *Carson.*

796. Do you recollect the principle on which they decided it?—Was it on the fact that it would not come within the definition of "improvements"?—No.

797. Is not the principle the same as that you have told us previously, that this was a covenant in his lease which was looked on as part of the consideration for the lease?—That is the principle; but the broad principle upon which all this prohibition claim for improvements is based, is the principle that the right to claim exemption from rent on improvements is the same as the right to claim compensation on quitting the holding, for improvements that he had made.

Mr. *Sexton.*

798. The question whether he had received consideration in the lease does not come before you?—It does not come before me; it is not a question of whether consideration was given or not. The lease is considered compensation.

Chairman.

799. You have given us three cases; what is the next?—The fourth is that of leaseholders holding under leases for 31 years certain, or (in the case of leases made before 1870) that were made for a life or lives, and which have lasted for at least 31 years; they are prohibited from claiming compensation for improvements, except permanent buildings, reclamation of waste lands, and unexhausted tillages and manures.

800. That is, that leaseholders under leases for 31 years certain and more, cannot be exempted from rent on any improvements except permanent buildings, reclaimed waste lands, unexhausted tillages and manures?—Quite so.

Mr. *Sexton.*

801. This is the converse of the other case; there must be a covenant to allow it?—Quite so.

Chairman.

802. Now about fee farm grantees, what have you to say?—Those four cases that I have given apply to yearly tenancies and leaseholders. Fee farm grantees are excluded from all improvements under all circumstances.

803. They are rented on all improvements?—That is so; they are excluded from claiming to be exempted from rent on any improvements.

Mr. *Carson.*

804. Is this under the Redemption of Rent Act?—Yes, this is under the Redemption of Rent Act.

805. What is the name of the case?—Kieran *v.* Mollan.

Chairman.

806. That is to say, fee farm grantees are rented on all improvements?—They are rented on all improvements; that is Kieran *v.* Mollan.

Mr. *Carson.*

807. How did that come about; was it because it did not come within the definition of the Act of 1870?—That was Mr. Justice Bewley's decision, that as they could not have applied for compensation on quitting their holding under the Act of 1870, and as the right to claim exemption from rent is the same as the right to claim compensation on quitting the holding, they were excluded.

808. Is there anything by reason of the fact that if you were selling under the Redemption of Rent Act, you would have to take into account the security for the rent?—No.

809. Because you say when you are selling and taking into account the security for the rent the more buildings and improvements there are the more security there is for the rent, therefore in selling the tenant has to pay higher, the more improvements he has made?—That is so.

Mr. *T. W. Russell.*

810. Did you hear the case of Kieran *v.* Mollan?—Yes.

811. You decided it?—I decided it in the first instance.

Chairman.

812. You decided it, but were you reversed?—Yes, I decided it on the principle that as a fee farm grant did not come within the Act of 1870 at all, and as it was not within the purview of the judges' decision in Adams *v.* Dunseath, there was no reason why the law in Adams *v.* Dunseath should be applied to it; and I proceeded to decide it on the 9th Sub-section of the 8th Section; but Mr. Justice Bewley overruled my decision, and held that as it did not come within the Act of 1870, it was excluded from any claim to be exempted from rent on improvements.

Mr. *T. W. Russell.*

813. May I ask you this: you heard the case yourself; was there a large claim for improvements there?—There were two cases.

814. But in the Kieran case?—In Kieran *v.* Mollan there was a fairly substantial claim.

815. What would you say was the amount?—I really forget now; but I think it came, I should say, to 10*l.* a year rent; and in the case of Doherty *v.* Molloy, which was heard at the same time, and decided in the same judgment, the claim for improvements was very large.

Mr. *Sexton.*

816. Was the case ever taken to the Court of Appeal?—No.

817. Has there been no decision of the Court of Appeal upon it?—There has been no decision of the Court of Appeal upon it.

818. It rests on Mr. Justice Bewley's decision?—Yes.

819. Was he sole in the matter as judge?—He and the Chief Commissioner, Mr. FitzGerald.

820. He is the sole judge by law of matters of law, is he not?—Oh, no; Mr. FitzGerald may dissent.

821. Can

Mr. *Kenny.*

821. Can you tell us what was the old rent on the hearing of that case?—In Kieran *v.* Mollan?

822. Yes?—I have got the report here.

Mr. *Carson.*

823. Is it reported?—Yes.

824. In the "Law Times"?—In the "Law Times." It is reported in 27 Irish Law Times Reports (that is last year's), page 129.

Chairman.

825. Have you got Mr. Justice Bewley's decision here?—Yes, I have.

826. Can you put it in, or must we get it from the Land Commission?—This paper gives the judgments of the Court at considerable length; both judgments are given in that report.

827. Your judgment also?—Yes.

Mr. *Sexton.*

828. Did the judge rely on the definition of "improvements" in the Act of 1870, and Section 57 of the Act of 1881?—Well, he decided it on the broad ground that as the fee-farm grant did not in any way come within the Act of 1870, the tenant had no right to claim exemption from rent on improvements.

Mr. *T. W. Russell.*

829. In other words, he decided that the question of landlord and tenant did not arise on any case of a fee-farm grant?—Oh, no; that was not the case of Kieran *v.* Mollan.

Chairman.

830. Now, you have given us three of the five points which you said were dealt with in Adams *v.* Dunseath. The first was the meaning of the word "improvements"; the second was the meaning of the words "predecessors in title," and the third was whether the provision of Section 4 of the Act of 1870 should apply to improvements claimed on a fair rent. Now will you go to No. 4 and No. 5?—Yes.

Mr. *Sexton.*

831. Was it a unanimous judgment in these three cases?—No.

Chairman.

832. In the third was it the case?—No.

Mr. *Sexton.*

833. Now we have gone back to Adams *v.* Dunseath?—Yes.

Chairman.

834. It was not a unanimous decision that the provisions of the 4th section of the Act of 1870 should apply to improvements?—No, it was dissented from by Lord Chancellor Law; the other six judges agreed.

835. Now, will you go on to the fourth point?—The fourth question in Adams *v.* Dunseath was whether the enjoyment of improvements under a lease is compensation, and that was held unanimously in the negative.

836. Whether the enjoyment of improvements under a lease is compensation?—Yes; and it was decided that it was not compensation.

Mr. *T. M. Healy.*

837. That only applies to leases, as I understand?—That is so.

838. It does not apply to a yearly tenancy?—No.

Mr. *Carson.*

839. Did they actually decide that as an actual proposition?—Yes.

840. Or did they decide it *per se*; they said that under some circumstances it might be so, did not they?—The final paragraph of the 4th section of the Act of 1870 does provide that the Court in granting compensation for improvements shall "take into consideration the time during which such tenant may have enjoyed the advantages of such improvements, also the rent at which such holding has been held."

Mr. *Sexton.*

841. That is improvements before the passing of the Act, is it not?—Yes.

Chairman.

842. Now, what is the fifth point?—The fifth point was the specific point in that case, as to whether improvements made before a lease were to be captured by the lease or not, that is to say, whether a house built before the making of the lease was to be held the property of the landlord, or whether it was to be exempted from rent as part of the property of the tenant.

843. Whether the lease ousted the claim for previous improvements?—Quite so.

Mr. *Carson.*

844. By reason of taking a grant of the premises from the landlord, they held, did they not, by a majority of one, that it estopped the tenant in that particular case?—Yes; Lord Justice FitzGibbon's judgment decided the matter; he decided that the lease did capture the house.

845. For the landlord?—For the landlord.

846. But did not he decide that it only captured the house, if the house happened to be mentioned?—He did, at least, practically.

847. He had the casting voice; and it depends upon that now as to whether the house is mentioned or not? The previous decision upon the subject decided the meaning of the words "predecessor in title;" under that decision with regard to "predecessor in title," it was decided that the breaking of a lease and the making of a new lease did not destroy the predecessorship in title; but in this particular case Lord Justice FitzGibbon decided that the other view should apply, because, he said, "We must look to see whether the new lease is a terminus from which we are to start afresh."

Mr. *T. M. Healy.*

848. He practically reversed the Court, did he not?—Well, it came to that. The three judges who supported him and carried this decision were overruled on the same point in an earlier part of the case.

Mr. *Carson.*

849. Did he put it solely upon the ground that it made a difference when the particular improvement, namely, the house, was mentioned in the lease; or did he say that if the house had not been mentioned in the lease, he would have decided the other way?—Well, that can be gathered from his judgment; that seems to be partly the ground.

Mr. *T. W. Russell.*

850. Then this Adams *v.* Dunseath was an Ulster case, was it not?—It was.

Mr. *Carson.*

851. Have any of the Sub-Commissioners ever been able to carry out this fifth point in the way it was settled by the majority?—It was very important in this way that until the decision in the case of Walsh *v.* Limerick, which I think was a Cork case decided about 1888, that ruling of the Court of Appeal was held to apply practically to all cases where a lease was made after the making of the improvements.

852. That is not the decision?—No; but until Walsh *v.* Limerick, when Mr. Justice O'Hagan and the Land Commission decided that that was not a true view of the law, the other view obtained.

Chairman.

853. What was decided in Walsh *v.* Limerick?—Walsh *v.* Limerick decided that this decision on the fifth point in Adams *v.* Dunseath was not of universal application to all cases where improvements were made before a lease.

Mr. *M'Cartan.*

854. Was the Ulster custom raised?—No.

Mr. *T. W. Russell.*

855. I was just going to ask that question; it was an Ulster case; was the Ulster custom ever mentioned during the whole of Adams *v.* Dunseath?—Not in the arguments; but Lord Chancellor Law specially stated that the decision they were laying down was not to be taken to apply to Ulster custom cases.

856. Has not Adams *v.* Dunseath applied universally to Ulster custom cases; have you any difficulty in applying Adams *v.* Dunseath in Ulster?—If you wish, of course, I can go into it now, but that is rather a large question.

Mr. *Sexton.*

857. Is this correct? In Walsh *v.* Limerick "it was held that Adams *v.* Dunseath has not decided that the taking of a lease by a tenant precludes him, in fixing a fair rent, from being regarded as having an interest in the buildings or other improvements previously made by him or his predecessors in title, and that whether or not the tenant in each case has lost his right to the improvements is a question of fact to be determined by considering the circumstances of each particular case"?—Yes; that was that decision; of course that referred only to improvements made before a lease.

Chairman.

858. That is all you wish to say at the present stage upon Adams *v.* Dunseath and its bearing upon the question of improvements; will you now tell us something about the presumption as to the ownership of improvements, turning to another point?—In cases not subject to the Ulster custom, the 5th section of the Act of 1870 provides that the presumption shall be in favour of the tenant.

859. That is, that all improvements shall be deemed to be made by the tenant with certain cases excepted?—Yes, but those exceptions are very numerous and very wide. The first of those is, that the presumption shall not apply where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on an actual sale to the landlord; that is, where the landlord purchases the estate, that bars the presumption in favour of the tenant as regards improvements made before the purchase.

Mr. *T. M. Healy.*

860. Even under the Landed Estates Court, is not that so?—Yes.

861. Does it not amount to confiscation of all the tenant's improvements, and is it not so even under the Landed Estates Court?—The effect of it was that no presumption arose in favour of the tenant.

Mr. *Carson.*

862. What is this case?—We are speaking of presumption.

863. What is the authority?—That is the 5th section of the Act of 1870; that was the first limitation on the rule of law as regards presumption. The words "actual sale" put into that exception were, of course, meant to meet the cases of marriage settlements and other such conveyances. The second proviso is: "Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made." In cases of leases the presumption did not apply at all; and, in the third case, the presumption did not apply where the "improvements were made 20 years or upwards before the passing of" the Act of 1870.

Chairman.

864. It admitted only improvements made by yearly tenants within 20 years?—Within the 20 years, so that in the case of old improvements (of which there was no history, of course), there was no presumption in favour of the tenant. And, fourthly, where the valuation of the holding was upwards of 100*l.* there was no presumption in favour of the tenant; fifthly, where the court was "of opinion that in consequence of its being proved to have been the practice on the holding or the estate" that a landlord made the improvements, there also the presumption was barred; and sixthly, "where from the entire circumstances of the case the court" was of opinion that the presumption should not apply, they need not apply it.

865. Then wherever there was no presumption the case was against the tenant?—Yes; where there was no presumption the result was against the tenant because he claimed to be exempted from rent, and the onus of proof lay upon him.

866. That is not true of Ulster custom cases,

Chairman—continued.

is it, the presumption there is the other way, is it not?—No; in Ulster Custom cases the presumption is in favour of the tenant in all cases.

Mr. *Sexton.*

867. What is the meaning of that last sub-section? Does not it seem to mean that where improvements have been proved to have been made by the landlord they are not presumed to have been made by the tenant?—Yes.

Chairman.

868. Now we will go on to another branch of the subject, the most important, perhaps, of all, the exclusions from the Land Act. Will you state your views upon that?—I shall.

Mr. *Sexton.*

869. In all cases where there was no presumption, the tenant being usually the person claiming the exemption from rent, the absence of presumption laid the onus of proof on the tenant?—Yes.

Chairman.

870. Now let us go to the exclusions from the Land Acts. How would you classify those exclusions in a general way?—Well, dealing with the entire classes of lettings in Ireland, I would classify them under four heads: First, lettings where no tenancy is created; secondly, lettings to future tenants; thirdly, lettings to present tenants, in certain cases; and fourthly, lettings which are excluded from the Acts by agreement.

871. Now take the first case, lettings where no tenancy is created; what sort of cases arise under that head?—First, agistment lettings and conacre lettings.

872. You must explain to the Committee, please, what an "agistment letting" is?—An agistment letting merely conveys the right of grazing the land; the possession of the land itself, that is, of the soil, does not pass.

873. Is it by the year, the agistment letting?—It depends, of course; it is by the season, as a rule, six months or eleven months.

874. The conacre letting is for a single crop?—The conacre letting is for a single crop. These are, properly speaking, not tenancies; the possession of the land does not pass. Then no tenancy is also created in the case of a fee-farm grant, in which the relationship of landlord and tenant does not subsist in law, and these cases are excluded from the Land Act under the decision in Kelly *v.* Ratley.

875. They are excluded also from the Redemption of Rent Act?—They are excluded from the Redemption of Rent Act, and from having a fair rent fixed.

Mr. *W. Kenny.*

876. This is before 1860, is it not?—Some fee-farm grants before 1860 had the relationship of landland and tenant.

877. That is where they are old renewable leaseholds which have been converted?—Converted under the Renewable Leasehold Conversion Act. It has been held also that there is no tenancy created where a sub-letting has been made by a tenant who had not power to sublet.

Chairman.

878. In that case the sub-letting is void?—In that case the sub-letting is void and no tenancy is created. That is under the provisions of the 18th section of the Act of 1860, which provided that where a lease contains a clause prohibiting sub-letting, any tenancy created in contravention of that clause should be void.

Mr. *Carson.*

879. I suppose a lease which contains a clause against assignment would be the same, would it not?—That has been partially cured by a short Act passed in 1888; Mr. Russell's Act.

880. It is only cured where the landlord has, in point of fact, assented?—Where he has taken rent.

Chairman.

881. Then will you go on with your statement?—Also the purchaser of a tenancy where the conditions prescribed by the 1st section of the Act of 1881 have not been complied with, is held to be excluded from the fair rent provisions.

882. Which of the conditions in the 1st section?—The 1st section, which is the section dealing with sales by tenants, of their interest in the holding, lays down certain rules which must be carried out by the tenant.

Mr. *T. M. Healy.*

883. But that would not be so unless the landlord moved to declare the sale void, would it?—It has not been actually decided, but it is doubtful whether the landlord moved or not, if the tenant did not comply with the provisions he might be excluded from having a fair rent fixed. That is a matter, as I say, that is open to decision, but it has not been decided, it is a moot point.

884. Has anyone thrown out that doubt at all? Yes, it has been thrown out. Mr. Cherry quotes the case of Shine *v.* Dillon, in which the question was discussed, and the doubt has arisen.

885. That would apply to a devolution on marriage, or country people giving over their farm and not going into court; the tenancy would be doubtful, would it not?—That is so.

Mr. *Sexton.*

886. In a case coming before you where a person has bought a tenancy and claims to have a fair rent fixed, you may inquire, may you not, whether he has complied with the conditions of Section 1 of the Act on purchasing the tenancy?—That is if the landlord raises the point: "This man is not a tenant; he has not carried out the requirements of Section 1 in purchasing, and I do not acknowledge him as tenant; I still hold that the man from whom he purchased the right is the tenant."

887. Would that hold him, even though the landlord was another person than the person under whom the purchase had occurred, even though the former landlord had allowed the man to go in as tenant?—If the landlord has accepted rent from the new purchaser, in that case probably he would be estopped from raising the point.

Mr. *Carson.*

888. Did you ever know a case where a tenant was excluded for that reason?—No, I never had such a case myself.

Chairman.

889. The second class of exclusions affects future tenancies?—Yes, future tenancies. A future tenancy is a tenancy beginning after the passing of the Act of 1881.

890. Except in cases of tenancies created before 1883?—Except in cases of tenancies created before 1883, where a tenancy substituted on the passing of the Act of 1881.

891. How may the present tenancy be determined?—A present tenancy may be determined by the termination of the estate of the landlord who created the tenancy, where such landlord has no power to create a tenancy in the land, or has no power to bind remaindermen.

892. Just illustrate the first case, will you, where the landlord is gone, but has no power to create a tenancy in the land?—I will give you an example.

Mr. *T. W. Russell.*

893. Is that the case for a limited owner?—That is the case of a limited owner; a tenant for life.

Mr. *T. M. Healy.*

894. Or where there is a mortgage?—Or where there is a mortgage.

Chairman.

895. Do you say that that is so where there is a mortgage?—Yes.

Mr. *Carson.*

896. Where there was a mortgage it would depend on whether the mortgagee had in any way assented by getting profits or anything of that kind, would it not?—Yes.

Mr. *T. W. Russell.*

897. Take the case of a limited owner?—In the case of a limited owner where the limited owner's estate comes to an end after the 1st January 1883, all tenancies created by such limited owner come to an end at the same time, and if the new successor, that is, if the remainderman or the next tenant for life, receives rent from those tenants, they become future tenants, and, of course, as such, they are excluded from the Land Acts.

898. Now, let us be sure about this. Do you think there are many such limited owners in Ireland?—Well, of course, a very large number of Irish estates are in settlement, and are in the possession of tenants for life, and in such cases where they have either created a new tenancy or so altered the old one as to make it a new tenancy, that tenancy would be excluded on the death of the tenant for life.

899. Let me put it in this way; I take a limited owner; he has created a dozen tenants; he dies; the remainderman comes into possession; am I to understand that the death of that limited owner abolishes the tenancies that have been created, and that all the tenants are future tenants incapable of getting a fair rent fixed under the Act?—Broadly, that would be the result of the decision in the cases of Sparrow *v.* Hepenstall, and Peyton *v.* Gilmartin.

Mr. *T. W. Russell*—continued.

Mr. *Carson.*

900. It would not be so unless the tenancies were created during the life of the tenant for life, would it?—I understood Mr. Russell to say that.

901. That number might be very few, might it not. It would not affect any tenancies that had been existing there at the time the tenant for life came into possession, would it?—No, it would not affect any tenancy that was created by the settlor of the estate.

Mr. *T. M. Healy.*

902. That is the original tenant, you mean?—That is the original tenant or owner in fee.

Mr. *T. W. Russell.*

903. There has been a decision which has made it the rule of law, at all events in certain cases?—In the case of Peyton *v.* Gilmartin the Queen's Bench have decided it.

Mr. *Sexton.*

904. I am not sure that we understand this yet. Do you mean that when a limited owner dies, when tenants created by him during the tenure of the limited owner, have applied to the Court and had a fair rent fixed, the death of the limited owner has placed them in the position of future tenants?—That has been held in Peyton *v.* Gilmartin.

905. That makes these all future tenants?—That is so.

Chairman.

906. There is no doubt of that, is there?—No.

Mr. *Sexton.*

907. Can the remainderman who comes in, raise the rent at his pleasure and evict the tenant at his pleasure?—The tenants are future tenants, and they are liable to all the incidents of a future tenancy.

908. Before the passing of the Act of 1881?—Of course if the remainderman had come into occupation or possession before the Act of 1881 that would alter the position.

909. I am speaking about now?—Yes, that is so.

910. The rent may be raised and the man evicted?—Except so far as the conditions of the future tenancy would apply to prevent it.

Chairman.

911. Where the title of the lessor comes to an end with the lease, no tenancy is created on its expiration by virtue of the Act of 1881, is it?—That applies to leasehold cases. The leading case upon that is the case of Massy *v.* Norse.

912. That is the case of Massy *v.* Norse which Mr. Fitzgerald told us of on Tuesday last?—Quite so.

Mr. *Carson.*

913. Are there many of those cases in your experience where this point as regards the limited owner arises?—I would not say that very many have

Mr. *Carson*—continued.

have been raised at present, but last week I dismissed two myself in Cavan on that point.

914. When did this point begin to be raised?—It is only a recent point; it has only arisen within the last four or five years.

915. A vast number of limited owners now get a rent fixed?—Massy *v.* Norse was an early case. The case of Peyton *v.* Gilmartin is the later case. Both of them apply.

Mr. *T. M. Healy.*

916. In the action of Parliament was not the 15th section of the Act of 1881 clearly intended to cover the point?—The 15th section has been held to apply to a different class of case now.

917. Look at the 15th section and you will see that the intention of Parliament was to have covered that point; but it appears it did not. "If in the case of any holding the estate of the immediate landlord for the time being is determined during the continuance of any tenancy from year to year, whether subject or not subject to statutory conditions, the next superior landlord for the time being shall, for the purposes of this Act, during the continuance of such tenancy, stand in the relation of immediate landlord to the tenant of the tenancy, and have the rights and be subject to the obligations of an immediate landlord." Is it not clear that Parliament intended to cover the point, and is it not equally clear that the section has been held not to cover it?—That may be so.

Mr. *W. Kenny.*

918. Do you remember in Peyton *v.* Gilmartin whether it was the landlord or the tenant who insisted that the tenancy had come to an end. My recollection is that it was the tenant who insisted on it?—No. I know Mr. Justice Holmes lays down the view that it would govern the case of where a statutory tenancy was created; a statutory tenancy which was in existence, and created as against a life tenant.

919. My recollection of Peyton *v.* Gilmartin was that the remainderman was seeking to bind a tenant by the rent which he had agreed to pay to the previous tenant for life?—I do not remember the facts of the case sufficiently well to answer that.

Mr. *Sexton.*

920. Is there anything in the law to secure the tenant in this case?—They are "future tenants."

Chairman.

921. In a case of this kind the tenant cannot have a fair rent fixed during the currency of the lease against the lessor?—No. In the case of an application under the 1st section of the Act of 1887 to fix a fair rent in the case of the leaseholder where that lease would expire with the estate of the tenant for life the tenant is now debarred.

Mr. *Carson.*

922. What is that decision?—That is the case of Moylan *v.* Finch.

923. I think the distinction was that if it must be recited on the face of the lease that he was only a tenant for life—the landlord; is not that the decision?—No, that is not necessary. Moylan *v.* Finch was a case I decided myself in the first instance, and that was a lease for the life of the landlord, who was the tenant for life.

924. Yes, but that is the very point. Do not you see that in that case there was an expression on the face of the lease that he was only tenant for life?—You will find in the judgment that that is not the ground. The ground is that the words of the first section of the Act of 1887 are that where the lessee at the expiration of his lease could apply; and it was held that he could not apply on the expiration of his lease when the estate came to an end. I can give you the report. I have it here.

Mr. *W. Kenny.*

925. These cases, as I understand, depend upon the general principle of law; that a tenant for life, unless acting under a power in a settlement, cannot bind the remainderman?—Quite so.

Chairman.

926. Now we will leave that point and go to another exclusion?—Well, where the middleman is ejected for non-payment of rent all sub-interests in the holdings under him are destroyed.

927. Where the middleman is ejected for non-payment of rent?—Yes; of course, if the sub-tenant signs an agreement to hold under the head landlord he becomes a tenant of that head landlord; but if that attornment is since the 1st day of January 1883 he becomes a future tenant.

928. He is a future tenant and not a present tenant?—He is a future tenant and not a present tenant.

Mr. *Sexton.*

929. But again the statutory term is annulled?—Yes, it is destroyed.

930. And he has no remedy?—None; the whole tenancy is gone.

Chairman.

931. Now, about tenancies created by a mortgagor after the date of the mortgage?—Tenancies created by a mortgagor after the date of the mortgage are not binding on the mortgagee. That was decided in the case of "Clarke *v.* Hall; and it was even held by Mr. Justice Munro, I think, on O'Rourke's Estate and in Clarke *v.* Nixon, that mere acquiescence on the part of the mortgagee in the creation of the tenancies by the mortgagor does not render them binding on the mortgagee.

Mr. *Sexton.*

932. How is that worked out?—The result would be, of course, that where the tenancies were created by the mortgagor, as in the previous case, where they were created by the tenant for life, his action would not bind the succeeding owner; so, when the mortgagee comes into possession he is not obliged to acknowledge the tenancies created by the mortgagor.

Mr. *T. M. Healy.*

933. The mortgagor could raise the point. Is not that decided in the case of Graham *v.* Pym? —It is decided; in the case of Graham *v.* Pym, I believe the question was decided.

934. Who decided it?—The chief Land Commission.

Mr. *Sexton.*

935. If the mortgagee comes in, the present tenants, at his pleasure, become future tenants? —Yes.

Chairman.

936. Now, I wish you would tell us whether there was any exclusion under the head that you are now upon, which opened the door for contracting out of the Act of 1881. I ask you now if there are any exceptions which open the door to contracting out?—It has been held in the most recent case, decided last February by the Court of Appeal, Conroy *v.* Marquis of Drogheda, and which I think is not yet reported, that where the tenant of a present tenancy enters into a lease or contract, it is binding, to exclude him from the provisions of the Act of 1881; he he becomes a future tenant.

937. That is to say, he may enter into a contract which will be a surrender of his position as a present tenant?—Quite so.

Mr. *T. M. Healy.*

938. But that is a reversal of a previous decision, is it not, practically?—It is; it overrules the Chief Baron's decision in M'Donnell *v.* Blake.

939. That is one of the most far-reaching decisions ever given, I suppose, under the Land Act, is it not?—Possibly.

Mr. *Carson.*

940. Can it apply to any tenancy under 150*l.* a year?—Oh, yes, it does.

Chairman.

941. Will you make quite clear to us what the effect of that decision in Conroy *v.* Drogheda is? —It is a case where a lease was made in a present tenancy, and the lease was held by the Court of Appeal to be the creation of a new tenancy, which new tenancy, of course, being made since 1883, is a future tenancy.

Mr. *T. M. Healy.*

942. In other words it decided that a present tenant can contract himself out of the Act, in spite of the Act which says he cannot; is not that so?—It looks like it.

Mr. *Macartney.*

943. Is the claim in that case made on a judicial form?—No; it is an ordinary lease made between landlord and tenant.

944. For how many years?—I am not sure, but I think it was a 31 years' lease.

Mr. *T. M. Healy.*

945. Was there any appeal?—No.

Chairman.

946. That is, of course, a most important decision, and may have very serious ulterior consequences?—It may.

Mr. *Carson.*

947. You say that is irrespective of the value? —That is irrespective of the value of the holding.

948. And irrespective of consideration?—And irrespective of consideration.

Mr. *T. W. Russell.*

949. What I am afraid of is that when you are talking about present and future tenants all the members of the Committee will not be able to carry in their minds the distinction between these different classes?—I shall be happy to explain.

Mr. *Sexton.*

950. Your point on Conroy *v.* Drogheda was this, I think, that a person who was entitled to have a fair rent fixed instead of that, became a party to a lease, and having become a party to a lease, lost his right, and became a future tenant? —That is putting it broadly, but as I have not the actual reported decision, I would not like to bind myself to the actual wording of it.

951. That was the effect of it upon him, was it not?—In his case it was the effect.

Mr. *T. M. Healy.*

952. I suppose you got it from one of the gentlemen who reported the case?—I read a note of the judgment.

Chairman.

953. We want to make that clear to the laymen on the Committee; the effect of that judgment is, is it not, that a tenant of a present tenancy may enter into a lease or contract which will be held to be a surrender of his present tenancy, and the creation of a new tenancy which will be a "future" tenancy?—Yes.

954. That is the long and the short of it?— Yes; and, practically, the same decision was previously given by the Court of Appeal in Torrens *v.* Cooke.

Mr. *T. M. Healy.*

955. Will you give us the name of the case which it is supposed Conroy *v.* Drogheda reversed?—M'Donnell *v.* Blake is one; it also reversed Jackson *v.* Hagan, which had been the two cases that governed the question.

956. Are these reported cases?—They are.

Mr. *Carson.*

957. Was the holding there identically the same holding?—It was not the same holding.

958. In Conroy *v.* Drogheda?—Yes.

959. And it was not a judicial lease under the 10th Section?—No. Of course it would be well to get the report of that decision; a number of considerations may appear which might throw light upon it.

Mr. *Sexton.*

960. Was not the covenant in the lease to pay a certain rent per annum?—In this case.

961. Yes?—Oh, yes.

Mr. *Carson.*

962. I would like to see that, and I think we ought to have a copy of that furnished to us?— Yes, that is very important.

963. In

Mr. *Leese.*

963. In your proof the next thing is the exclusion of future tenancies; where legal representation has not been taken out to a tenant deceased, his successor may be held to be a future tenant; is that so?—Yes.

964. That is a question in which the law at present is in rather a doubtful state, is it not?—The point was raised in the Court of Exchequer in the case of Fox *v.* Langan.

Mr. *Carson.*

965. I was in that case, I know it; it did not succeed?—No, but the judgment of the Chief Baron and of Mr. Justice Andrews decided it at the time.

966. The judgment of the Chief Baron and of Mr. Justice Andrews was overruled, and emphatically overruled, was it not?—By one judge.

967. At the trial at *Nisi Prius*?—Yes.

Mr. *T. M. Healy.*

968. That was a question of mixed law and fact, was it not?—Yes; in that case the decision of Mr. Justice O'Brien at *Nisi Prius* was really based on different facts which appeared in the hearing of the case; he dissented on the law, and so did Mr. Justice Murphy. Of course, the way the matter stands now is that you have two judges against two on that point.

Mr. *Carson.*

969. But that has never been carried out in practice, has it?—No.

Mr. *T. W. Russell.*

970. That is not settled practice?—No; the practice is the other way.

971. Then we need not trouble about that, need we?—No.

Mr. *T. M. Healy.*

972. In the County of Mayo were not thousands of tenants excluded on that point by some of the Sub-Commissions of that day?—It was held for a long time that there was no power to give those limited administrations where the tenant had died, and the application was made by his successor who had not taken out administration in the ordinary way.

973. Are you not aware from the practice of the Sub-Commissions in counties like County Mayo, where ignorant tenants came up and had not taken out administration, the Sub-Commission refused them?—It was undoubtedly the fact.

Mr. *Carson.*

974. That may have been so in certain cases at the commencement, but was not that specifically overruled?—Yes.

975. And did not Mr. Justice O'Brien refuse to follow it in Langan's case?—He did; the doubt was raised by the Chief Baron's and Mr. Justice Andrew's decision.

976. But it was never followed, was it?—No.

Mr. *Leese.*

977. Did you say that Fox *v.* Langan was the authority for that?—That is the case in which the question of law was discussed.

978. Then it was held, I think you have told us, by the Exchequer Division (Murphy dissenting) that a tenant in order to have a fair rent fixed must be a person not merely in occupancy, but must also be entitled under some contract of tenancy, and must be in direct privity with the landlord?—Yes, but we have never followed that in practice.

Mr. *Sexton.*

979. Are you still on the point of exclusion of present tenancies?—Yes.

Mr. *Leese.*

980. Exclusion No. 3 is certain classes of present tenants excluded?—Yes.

981. What do you say about that?—As the Committee understand, a present tenancy means a tenancy subsisting at the passing of the Act of 1881, or where it was created before 1st January 1883, in a holding where the tenancy subsisted in 1881. The 58th section of the Act of 1881 lays down a series of exclusions, in a number of cases. The 58th section (page 323 in Cherry's book), refers to holdings which are present tenancies, or may be present tenancies; they may be excluded in the case of any holding which is not agricultural or pastoral in its character, or which is partly agricultural and partly pastoral.

982. It includes something more, does it not—residential holdings?—Residential holdings, mill holdings, and holdings part of which are non-agricultural would be brought within that, such as the case of Wall *v.* Eyre, where the tolls on a fair were dealt with.

Mr. *Carson.*

983. Would it not be better to take the first one, where the holding is not agricultural or pastoral in its character, or partly agricultural and partly pastoral; are there any extensions of that?—In the first place, the principle of the case of Leonard *v.* St. Leger Barry has been introduced very largely into that class of cases; that is, where a portion of the holding is non-agricultural the entire holding is excluded. That, of course, is laid down in Boyle *v.* Foster and that class of cases.

Mr. *Leese.*

984. That was a mill?—It has been also held in the case of Crookshank *v.* Law that a taking of three acres of agricultural land by a man who wanted to add that on to his residence would be outside the Act.

985. There seems to be a new decision on the demesne lands?—Demesne lands are excluded. The main questions that arise with regard to these is the question, perhaps, of undemesning, or what constitutes undemesning.

Mr. *T. W. Russell.*

986. Is not there a famous case of Lord Antrim's on that?—Yes; the first case on it is Hill *v.* Antrim, which defines demesne lands in a very much more limited way.

Mr. *T. W. Russell*—continued.

987. Let us have the decision on Lord Antrim's case. What was the effect of it?—Lord Fitzgerald in that case defined demesne lands as "lands within the ambit of the demesne reserved with the mansion house, and used for purposes of pleasure or for pasture, or sometimes let to dairymen, or during the minority of the owner." That was Judge Fitzgerald's definition at that time, but that has since been overruled in the case of Griffin *v.* Taylor.

Mr. *T. M. Healy.*

988. It was upon that state of the law that the Act of 1881 was passed, was it not?—That was the law when the Act of 1881 was passed.

Mr. *Leese.*

989. This is the case of Hill *v.* Antrim?—That was the case of Lord Fitzgerald's; then Griffin *v.* Taylor overruled that.

990. Then came Spencer *v.* Tedcastle, did it not?—Spencer *v.* Tedcastle is the last case on the question of undemesning.

Mr. *Carson.*

991. That was a case where there was a lease of 999 years, is it not?—Yes; the courts held that a fee-farm grant did not undemesne.

Mr. *Sexton.*

992. Has it been held in the case of a 999 years' that the land continued to be demesne land all the time?—Yes, that would be the effect.

Mr. *Carson.*

993. That is, if let as demesne land?—Yes, quite so.

Mr. *Leese.*

994. Has that land formed part of home farms?—They are excluded specifically.

Mr. *T. W. Russell.*

995. Mr. Fitzgerald said there were not many such; is that so?—Well, I would say not.

Mr. *Carson.*

996. Will you tell us what a home farm is?—A home farm is considered to be a farm which is used in connection with the landlord's residence, and not merely for the purposes of profit; that is, it is used for the convenience of the landlord's residence, and not merely for profit. Hamilton *v.* Sharpe is the leading case.

Mr. *Sexton.*

997. That is when the landlord has it himself, is it not?—Yes; if the landlord has a residence and he requires another farm, which lies somewhere near, for his convenience he may take up such farm, and it is called a home farm; the tenant is excluded.

Mr. *T. W. Russell.*

998. Take another; Suppose a landlord leaves his home farm and lets it to another gentleman who comes into possesion of house and farm both; how does it affect the incoming tenant?—Of course, it depends, on whoever then raises the point as to whether it is a home farm, and whether he can satisfy the Court that it is a home farm.

Mr. *Carson.*

999. It is a question then of fact as to the particular land?—Quite so.

Mr. *Sexton.*

1000. There appears to be something more than a question of fact there because the landlord, whilst he had the farm himself, used it for the convenience of his residence; then when he lets it, the tenant is excluded from the fair rent provisions on the assumption that the landlord may at some time or other want it back again; is that it?—Yes; if the landlord can satisfy the Court that it is a home farm, and that it is used by him as a home farm, that is sufficient.

1001. And that the fair rent should not be fixed because he might want to come in during the statutory term?—Yes; I have excluded such cases myself when the landlord has established the fact that the particular farm was a home farm attached to his estate or demesne.

1002. Does it not come to this, that a statutory term is prevented by the assumption of a possible future use of that particular land on the part of the landlord?—By the fact that it actually has got at present the characteristics of a home farm.

Mr. *Macartney.*

1003. The landlord would have to establish that the tenant took it with the incidents of a home farm, would he not?—Yes, that is, that the land possessed the characteristics of a home farm.

1004. I want to put it quite clearly; if the landlord had been merely letting what had been a home-farm, and the tenant took it, or imagined that he was taking it as ordinary farm property, the landlord would not succeed before you, or any Commission, in establishing his right, would he?—Yes, he would; it is not necessary that it should have been let as a home farm.

1005. I only want to clear up what the legal decision is?—If the landlord can establish before us that the farm is a home farm, that is, that it comes within the legal requirements of a home farm, we exclude it; we dismiss it as not within the Land Acts.

Mr. *Leese.*

1006. The next question is, the question of town parks. There are three statutory requisites, as I understand, which you are prepared to mention; what are those?—First, the holding must be near a city or a town; secondly, it must bear increased value as accommodation land over and above the ordinary letting value of the land occupied as a farm; and thirdly, it must be in the occupation of a person living in the city or in the town, or in the suburbs thereof. Those are the three statutory requisites required by the Act of 1881.

1007. Section 58?—Section 58. The 9th section of the Act of 1887 was passed with the object of broadening the view as regards the tenant, and it provided that, where a holding possessed these three characteristics, it still may be brought within the fair rent provisions of the Act of 1881, if the tenant can show that it is let and used as an ordinary agricultural farm, and that its inclusion would not substantially interfere with the improvement or development of the town, or the accommodation of its inhabitants.

1008. What

Mr. *Leese*—continued.

1008. What do you say constitutes a city or a town; is population, now, the test?—The chief test, at first, was that of population; and it was decided by Mr. Justice Lawson, and several other of the judges, that a town of anything under 600 or 700 people was not a town within the meaning of the Act.

Mr. *T. W. Russell.*

1009. That is Mr. Justice Lawson?—Well, he first decided it, and it has been decided in a great variety of cases since Mr. Justice Lawson's decision that that was so, that that rule applied; but in the most recent decision (Archer *v.* The Earl of Caledon) it was decided that the population test was defective.

1010. Is that in South Tyrone?—It is a decision with regard to the town of Caledon, in South Tyrone.

Mr. *Leese.*

1011. It is Caledon *v.* Archer, I believe, 28 Irish Law Times Reports?—Yes.

Mr. *Sexton.*

1012. What is the rule now?—They decided that it is not necessary that the place should have any particular population, that any assemblage of houses and people which created a demand for accommodation land constituted a town.

1013. Do you mean half-a-dozen houses?—If it created a demand for accommodation land, probably yes. The result of that decision is that small places have been held to be towns. Five Mile Town has been held to be a town, with a population of 500; Dundrum, in County Down, has been held to be a town, with a population of 376, I think.

Mr. *T. M. Healy.*

1014. Although it was previously held not to have been a town?—Yes. And Timoleague, in the county of Cork, with a population of 360, has been held to be a town.

Mr. *M'Cartan.*

1015. You say "held to be a town;" does not that mean it was a town at the passing of the Act of 1881?—Well, in town park cases it has always been held that it must be a town, "at the passing of the Act of 1881."

1016. And the Chief Commissioner held in the case of Dundrum that it was not a town?—Oh yes, Dundrum up to recently has always been held and ruled not to be a town.

1017. The Chief Commissioner has ruled, has he not, that the same town was a town at the passing of the Act of 1881?—Yes. Of course that ruling of the Chief Commissioner is undoubtedly carrying out the principle of Caledon *v.* Archer, which specifically (and the Lord Chancellor's judgment is very specific on that point)——

Mr. *T. W. Russell.*

1018. The present Lord Chancellor?—Yes.

Mr. *M'Cartan.*

1019. The effect of that is, is it not, now to decree that the town of Dundrum, which previously was held not to be a town, at the passing of the Act of 1881, was a town at the passing of the Act of 1881?—Yes, that is the effect.

Mr. *Leese.*

1020. What have you got to say about the proviso in Section 9 of the Act of 1887 "as an ordinary agricultural farm"; what is the meaning of those words?—That is a saving provision in the 9th section of the Act of 1887, which would bring in a letting used as an ordinary agricultural farm. That has given rise to some discussion and decision as to what is the meaning of being used as an ordinary "agricultural" farm. It has been held by the Court of Appeal in the case of MacNamara *v.* MacNamara that where the land was used for conacre purposes and for sheep grazing, that that was not user as an ordinary agricultural farm.

Mr. *Carson.*

1021. I know that case; the reason of that was, was it not, that the words here are "an ordinary agricultural farm"?—Yes.

1022. And if you look at the previous Act it says: Anything "let to be used wholly or mainly for the purposes of pasture," or "any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral." Therefore they held that you could not use the thing as an agricultural farm if you were using it for pastoral purposes, did they not? Yes, that is the result of the decision.

Mr. *Leese.*

1023. Then it follows that a holding used for pasture would not come within the 9th section of the Act of 1887?—It does.

Mr. *Sexton.*

1024. Was not there a further purpose in the Act of 1881, with regard to the residence of a person?—Yes, it must be in the occupation of a person living in the city or town, or the suburbs thereof.

Mr. *Leese.*

1025. Now pass on to No. 5, pastoral holdings, what are they?—Holdings which are excluded for pasture, or let to be used wholly or mainly for the purposes of pasture.

1026. Is there any limit of value?—If they are valued at not less than 50*l.*, and secondly, where the valuation is under 50*l.*, they are excluded, unless the tenant resides on the holding, or uses it in connection with the holding on which he does reside.

1027. What is this exclusion?—That is the exclusion contained in the 58th section of the Act of 1881.

Mr. *Sexton.*

1028. What about the other ones?—Where the valuation is under 50*l.*, the holding is not excluded where the tenant resides on it, or where he uses it in connection with a holding on which he does reside.

1029. Five, six, seven, and eight you do not regard as tenancies, do you?—No; of course with regard to pasture holdings, they depend on the purposes of the letting.

Mr. *T. M. Healy.*

1030. Can you tell us the effect of that pasture decision in the county of Clare, of O'Brien *v.* White; was not that an enormous decision, affecting the whole county?—The case of O'Brien *v.* White is the crag lands case. That case was based

Mr. *T. M. Healy*—continued.

based on the decision of the House of Lords in the case Westropp *v.* Elligott, where the House of Lords held practically that the purpose of the letting need not necessarily be gathered from the terms of the instrument, and that if the lands were more properly used for pasture they were to be held to be let for that purpose.

Mr. *Carson.*

1031. And only be used for pasture practically? —And only to be used for pasture practically.

Mr. *T. M. Healy.*

1032. "According to the customs of good husbandry," was it not?—Yes; they were to be held to have been let wholly or mainly for the purposes of pasture, and in the case of O'Brien *v.* White, where the greater portion of the holding was what are called crag lands, with rocks sticking up here and there through the lands, which would render them difficult, if not impossible, to be tilled in the ordinary way.

Mr. *T. W. Russell.*

1033. That is to say, that if a Clare person has a farm which is very craggy, and if he digs with his spade in between the crags, and that is the only farm that he has, it is outside the Act, because, forsooth, it is a pasture holding; is not that what it means?—Yes.

Mr. *Carson.*

1034. In that particular case was it not proved, as a fact, that he could not, with any profit, dig with a spade between the little rocks? —Yes, that is the principle of the decision, that it could not be profitably tilled.

Mr. *T. M. Healy.*

1035. That is apart from the question of contract, is it not?—Yes.

Mr. *Sexton.*

1036. Just because he could not use a plough there, is that it?—Yes.

Mr. *T. W. Russell.*

1037. The House of Lords probably did not know that he had a plough to use, did they?—As some of the gentlemen said, it could not be used as ordinary tillage land in the ordinary course.

Mr. *Sexton.*

1038. Was not that ignoring a spade as an instrument of tillage?—Even in O'Brien *v.* White you could have used a little spade labour.

Mr. *Macartney.*

1039. That was a case of a farm of over 200 Irish acres, was it not?—Yes.

1040. And is it not a fact that the evidence was to the effect that only 20 acres could be tilled with a spade, and less than 15 by a plough? —Quite so.

Mr. *W. Kenny.*

1041. Was not the ordinary use of it simply for winter pasturage in Clare?—I have not got any personal knowledge of these crag lands.

Mr. *Leese.*

1042. Now, will you pass on, please, to the next point; lettings for temporary convenience? —These are all excluded specifically under the 58th section.

1043. What do you say about cottage allotments not exceeding half an acre?—They are also excluded.

1044. And glebe lands as defined, are they not, by the Act of 38 & 39 Vict.?—Yes.

1045. That is glebe lands occupied by any "ecclesiastical person"?—Yes.

1046. We have had that?—Yes.

1047. The next thing in your list of exclusions of present tenancies; in addition to the tenancies specially excluded by Section 58 of the Act of 1881, are there other cases in which present tenants are also excluded from the fair rent sections of the Lands Act; is that so?—Yes. English managed holdings, for example.

1048. Now go on with that?—The English managed holding is a holding in which permanent improvements have been made and substantially maintained by the landlord.

1049. That is under the Act of 1881, Section 8, Sub-section 4?—Yes.

Mr. *Sexton.*

1050. Do you know whether there is only one case of this sort in Ireland?—In my own experience the point has been only raised once before me.

Mr. *T. M. Healy.*

1051. What was your ruling?—In that case it was proved that the permanent improvements had been made, but that they were not maintained, so we fixed a rent.

Mr. *Carson.*

1052. Do you know the Duke of Devonshire's estate?—I never had any English managed holdings on that.

Mr. *T. M. Healy.*

1053. The Duke never makes the improvements; he gives slates and timber, does he not? —The question was only once raised before me as Assistant Commissioner.

Mr. *Macartney.*

1054. You do not represent to the Committee that that represents the whole number of cases, do you?—No; as I say, the point was only once raised before me.

Mr. *Leese.*

1055. Will you pass now to the exclusion of a purchaser of a present tenancy, sold for a breach of a statutory condition, Section 20 of the Act of 1881?—They are specifically excluded. If a tenant who has been ejected for nonpayment of rent sells his equity of redemption, the purchaser of that tenancy cannot at any future time apply to have a fair rent fixed for the holding.

1056. Is that in "Cherry"?—That is in "Cherry," page 248, he there gives the decision.

1057. Does that apply also to the purchaser of a tenancy sold by an assignee in bankruptcy?— Yes.

1058. What is the reference in "Cherry"?— Mr. Cherry gives that at page 238.

1059. Now,

Mr. *Leese*—continued.

1059. Now, what do you say as to the exclusion of a reversionary lease?—The 21st section of the Act of 1881 excludes cases where a reversionary lease of a holding, or of part of a holding, has been *bonâ fide* made before the 21st of August 1881.

1060. The 21st?—Well, the 21st or perhaps the 22nd August was the date of the passing of the Act of 1881.

Mr. *Carson.*

1061. Of course you cannot interfere with that, can you?—That is specifically excluded by the 21st section.

Mr. *Leese.*

1062. And there are two cases you quote in support of that, are there not?—The cases on that are Beamish *v.* Crowley and Sproule *v.* Ramsey.

1063. There is another point in your proof, "resumption by landlord;" what have you to say about that?—Well, on the expiration of the lease the tenant will be excluded if the landlord can satisfy the court that he desires to resume possession of the holding for the *bonâ fide* purpose of a residence for himself or for some member of his family, or also if he can show that he wants to use it as a home farm in connection with his residence.

1064. Could you give us a reference to the section of the Act of Parliament as to that?—That is under the 21st section of the Act of 1881.

1065. The next thing is, "Tenancies contracted out of Land Acts"?—That is the case Mr. Carson was speaking about, where the valuation is over 150*l.* The case of Ronaldson *v.* La Touche is the leading case on that point.

1066. You refer to Ronaldson *v.* La Touche?—Yes.

1067. What have you to say about the case where a mortgagee enters into possession?—A tenant who has been displaced by a mortgagee entering into possession under his mortgage is held to no longer occupy the lands (that is the meaning of the word within the definition clause), and does not come within the definition of a tenant; that was ruled in the case of Farrelly *v.* Doughty.

Mr. *Carson.*

1068. Have you found many of those?—Just a few; I have had a few.

1069. Was not there some decision in Holmes' estate about that?—I do not know that decision.

Mr. *Leese.*

1070. However, the case you give is Farrelly *v.* Doughty; that is one, at any rate?—Yes, that is so.

Mr. *T. M. Healy.*

1071. It was held also, was it not, in Sir John Bradstreet's case that the tenant could before the Act of 1881 contract by his lease that he would take no benefit under future legislation?—Yes; Bradstreet was the landlord, and I forget the name of the tenant.

0.122.

Mr. *T. M. Healy*—continued.

1072. In the case of a tenant who before the Act of 1881 contracted that he would not take the benefit of future legislation, that was held to operate to prevent him getting the benefit of the Act of 1881, was it not?—Yes.

Mr. *Leese.*

1073. Now pass on to the question of subletting, please?—A tenant who is not in occupation or his holding owing to a subletting at the date of the service of the originating notice to fix a fair rent cannot have a fair rent fixed unless (there are three exceptions): first, he has sublet with the consent of his landlord; secondly, unless the subletting is to labourers employed on the holding, and does not exceed half an acre; or, thirdly, unless the subletting is of a trivial character.

Mr. *Carson.*

1074. What section is that?—Section 57 of the Act of 1881, and Section 4 of the Act of 1887.

1075. Does that arise under the definition section?—No, the last two do not.

1076. Or this question of subletting at all?—Yes; the definition section first, and, secondly, the fourth section of the Act of 1887, which is the special clause with regard to triviality.

Mr. *T. W. Russell.*

1077. Take the first, the consent of the landlord. What is held to be "consent"?—"Consent," now, has been held to be something active. It must be active; passive consent is not sufficient; that is, if the landlord knows of the subletting and does not take objection, where he could take objection, he is still held not to have consented.

1078. In other words, "assent" is not held to be "consent"?—Yes, that is so.

Mr. *Leese.*

1079. Where there is a covenant against subletting unless with the written consent of the landlord a verbal consent is not sufficient; is that so?—In the case of Bowman *v.* Catherwood Chief Baron Palles held that where there was a covenant against sub-letting except with the written consent of the landlord a verbal consent was not sufficient; it must be in the form provided by the section of the Act of 1860; it must be in writing.

1080. That is Bowman *v.* Catherwood?—Yes.

1081. Would the principle of Bowman *v.* Catherwood apply to subletting without the written consent of the landlord made since the passing of the Act of 1881?—Yes, because the second section of the Act of 1881 contains a similar proviso, that no subletting can be made of a holding except with the written consent of the landlord.

1082. Now, about the "triviality," does that depend alone on the area of the part sublet, or also on its value?—The leading case on that, to a certain extent, is the case of Martin *v.* Purcell. In the earlier cases on the subject it was held by Mr. Justice O'Hagan that the question of triviality depended upon the amount in area of the holding which was sublet; that if a sub-

Mr. *Leese*—continued.

stantial portion of the holding was sublet it could not be trivial, but that "area" was the chief test. Now, however, in a recent case, the case of Martin *v.* Purcell, 3 roods 11 perches out of 151 acres was held to be not trivial, because on that 3 roods 11 perches a tar factory had been built, which was let to a sub-tenant at a high figure.

Mr. *T. M. Healy.*

1083. And there was the case of Kennedy *v.* Essex, was there not?—Yes; in the case of Kennedy *v.* Essex there were several small lettings which did not come to over two or three acres.

1084. Was that held to be trivial, two to three acres?—No, it was held not to be trivial.

1085. That amount was excluded, and the court held it not to be trivial?—It was two acres out of 177 acres.

Mr. *Macartney.*

1086. And there were houses in the case of Kennedy *v.* Essex, were not there?—Yes.

1087. Two acres out of how many was it?—One hundred and seventy or 180, I think.

Mr. *Carson.*

1088. Can you tell us how many sub-tenants there were?—Four or five, or more.

Mr. *Leese.*

1089. Where part of a holding was sublet, when the contract of tenancy under which the tenant claims was made, is the landlord's consent effectual to give a status of occupation to his tenant?—That is the point of Flannery *v.* Nolan, where it was laid down that where a portion of the holding has been sublet at the making of the lease, that that is not a consent to sublet but is merely the granting of or reversion to the land sublet, and that, consequently, no consent on the part of the landlord is sufficient to bring the tenant within the Land Acts.

1890. Now we come to "Exclusions by Agreement," and the first is "Judicial Leases"?—There are two methods provided by the Act of 1891 by which the provisions of that Act may be excluded by agreement between the parties, and those two methods are, the making of a judicial lease, or the granting of a fixed tenancy.

1091. You are dealing with both together; take the judicial leases first, please?—A judicial lease is a lease agreed on and approved by the Land Commission Court, and which is made between a landlord and the tenant of a tenancy not subject to statutory conditions.

1092. Yes, that is the point we want?—And it can exclude the provisions of the Land Acts.

1093. That is under Section 10 of the Act of 1881, is it not?—That is under Section 10 of the Act of 1881.

Mr. *Macartney.*

1094. This is one of the provisions of the Land Act, is it?—Yes; that is specially provided.

1095. It only excludes some?—Quite so; you exclude them by making a judicial lease of this character.

1096. By taking advantage of the provision of the Act?—Yes.

Mr. *Carson.*

1097. In that case of a judicial lease, as I understand, the tenant is protected by having the intervention of the court?—Oh, yes; it can only be made with the consent of the court.

1098. How is that reconcilable with the case of Conroy *v.* Drogheda that you have told us of before?—That is a different class of case. In this case of the judicial lease it is the case of a lease which has got specific provisions contained in it which must be approved of by the Land Commission Court; in the other case it has been held by the Court of Appeal that the making of a lease which, in effect, is a determination of the old tenancy and the creation of a new tenancy would be binding.

1099. What is the advantage of taking out a judicial lease, either to the landlord or tenant?—I do not suppose half-a-dozen of them have been taken out.

Mr. *Leese.*

1100. An ordinary tenancy may be converted into a fixed tenancy, may not it?—Yes.

1101. How?—It may be by an agreement between landlord and tenant that such tenancy shall be held under a fee-farm rent which may be revised at certain periods by the Land Commission Court.

1102. And that is under Sections 11 and 12, is it not?—That is under Sections 11 and 12; but that also is a provision that practically has never been much utilized.

1103. Perhaps you can tell me whether that is the end of your proof?—Yes, that is the end of it.

Mr. *T. W. Russell.*

1104. I want to ask you some questions, first of all, about the Redemption of Rent Act. You heard the case of Mr. Gault, of Doagh, in the county of Antrim, did you not?—Yes, I did.

1105. I believe Mr. Gault paid 1,000*l.* as a fine for that lease?—It is the case of Gault *v.* Wilson.

1106. Now, will you explain that case to the Committee?—That was a case under the Redemption of Rent Act. It was a holding of 191 acres, and it was held under a fee-farm grant made in the year 1871. The predecessor in title of the tenant held under a lease of 1852, at a rent of 288*l.*

Mr. *Carson.*

1107. Was that a lease for lives renewable?—No, it was not. In 1871, when there were still 23 years of this lease to run, the landlord agreed to give a fee-farm grant.

1108. In other words, he gave a lease in perpetuity; it is not really a fee-farm grant, is it?—Oh, yes, it was; he gave a fee-farm grant at a rent of 236*l.*, getting a fine of 1,315*l.*

Mr. *T. W. Russell.*

1109. £1,315 fine?—Yes; that was calculated on the capitalised value of 52*l.* 12*s.* 6*d.*, the difference between the old rent and the new at 25 years' purchase; in fact, the point that arose in that case was the question of giving an allowance for the fine paid by the tenant.

1110. How did you decide that case?—In that case I held that the question of fine should be taken

Mr. *T. W. Russell*—continued.

taken into account, that the fine paid by the tenant on taking out the lease should be taken into account on fixing a fair rent, having regard to the final clause of the 8th section of the Act of 1881; however, my view of the law there was wrong, because it has now been held that a fine cannot be taken into account when paid by a tenant.

Mr. *T. M. Healy.*

1111. Had not you a dictum of Justice O'Hagan to support you in that view?—Yes.

1112. There was a dictum of Justice O'Hagan in support of that view beforehand?—I think, in the case of O'Neil *v.* Cooper, Mr. Justice O'Hagan decided that the fine should be taken into account, but he did not specify the amount which should be allowed.

Mr. *Carson.*

1113. That was under the Act of 1881, was it not?—Quite so.

Mr. *T. W. Russell.*

1114. Perhaps you will allow me to finish this case. Now, will you read the section under which you acted?—This was a redemption of rent case.

1115. Let us have the section under which you acted first of all; I want this case threshed out?—Well, the section is the 10th sub-section of the 8th section of the Act of 1881, which provides, "The amount of money, or money's worth, that may have been paid or given for the tenancy of any holding by a tenant or his predecessors in title, otherwise than to the landlord or his predecessors in title, shall not of itself, apart from other considerations, be deemed to be a ground for reducing or increasing the rent of such holding."

Mr. *Carson.*

1116. It was not under this Act it was done at all, was it?—The Redemption of Rent Act provides that a tenant, when a rent is to be fixed, shall be held to be subject to all the provisions which apply to present tenants.

Mr. *T. W. Russell.*

1117. Now please proceed?—The section provides that "the amount of money or money's worth that may have been paid or given for the tenancy of any holding by a tenant or his predecessors in title, otherwise than to the landlord or his predecessors in title, shall not, of itself, apart from other considerations, be deemed to be a ground for reducing or increasing the rent of such holding." That section contains the words "otherwise than to the landlord or his predecessors in title." The section, of course, excluded all payment for tenant right; that is to say, any payment by one tenant, for the tenant-right of the holding, to the other; you could not take that into account. It specifically contains the words "otherwise than to the landlord," and having regard to the provisions of the 7th section of the Act of 1870, which deals with compensation in respect of payments to incoming tenants, and from my general view of the law, I decided that the fine should be taken into account, especially as in that case we had clear

Mr. *T. W. Russell*—continued.

evidence that the rent fixed under the fee-farm grant was calculated on the annual income arising out of the fine paid; that is, the fine paid was 1,300*l.*; they calculated that the interest on that would come to 52*l.*, and they deducted from the old rent 52*l.* and fixed the new rent at 52*l.* less than the old because of the payment of the fine.

Mr. *Carson.*

1118. Who did?—The parties at the making of the grant, and I thought on the whole that the evidence showed that the intention of the parties there was by paying the fine to part purchase the interest in the holding, to the extent of the fine, and that consequently when we came to fix a rent we were bound to consider that that proportionate part of the rent, or annual value which had been purchased by the fine, was still the property of the tenant, and should be allowed to him.

Mr. *T. W. Russell.*

1119. What was the old rent when you went to hear the case?—The old rent was 236*l.*

1120. What rent did you fix?—Well, we fixed a rent, I think, of 170*l.*

1121. 170*l.* Was Mr. Gault an improving tenant?—Yes; I forget now what the improvements were that were claimed in that case.

1122. What has been the result of that case?—In that case with regard to the question of fine my view of the law was wrong, and he was not given an allowance for the fine.

1123. The landlord appealed?—Yes.

1124. And what was the result of the appeal in figures?—Well, the result of the appeal in figures was that they raised the rent.

1125. First of all they declined to take into consideration the question of the fine?—Yes.

1126. Secondly, they declined to take into consideration any question of the improvement under the Rent Redemption Act?—I am not sure whether that question on the Rent Redemption Act was raised in Gault's case on appeal.

1127. It has been raised since?—Yes; it has been raised since in the case of Mollan *v.* Kieran.

1128. And decided?—Yes.

1129. No right to improvements?—Yes.

1130. Will you tell us just in figures the result. You tell us first of all that the fine was set aside, the court declined to take that into consideration at all, and other decisions have since been given by which the improvements effected by the tenant could not be taken into consideration in a case like that. Now what was the result of Gault's case?—I do not think I have got the appeal rent here, the rent was raised by about 15*l.*, I think.

Mr. *Carson.*

1131. That is the rent you fixed?—Yes.

1132. But it was reduced, as a matter of fact?—Oh, it was reduced, as a matter of fact, from the fee-farm grant rent.

Mr. *T. M. Healy.*

1133. That is four per cent., the amount of the reduction; 15*l.*, is it not?—Yes.

Mr. *Carson.*

1134. How did the 1,315*l.* come about?—They had a close calculation as to the amount.

1135. I ask how the purchase money came to be 1,315*l.*?—That was the amount of money agreed to be paid.

1136. You say that has reference to the difference between the rent?—You mean with regard to the shillings; it was 52*l.* 12*s.* 6*d.*, to be accurate. I am not giving you shillings; if you work that out you will find it will come exactly to what I say.

Mr. *Sexton.*

1137. At any rate, it was admitted to be based on 25 years' purchase?—It was; the evidence was clear and undisputed on that point. We then gave an allowance for the fine which, in our view, represented a share of the annual value of the holding; we reduced the rent to 170*l.* That then was appealed against, and it was held that my view of the law with regard to fines was not the right one, and that no allowance could be given for the fine in the case; consequently the allowance was not made in the yearly rent.

1138. That raised the rent to 185*l.*; did the difference of 15*l.* represent the allowance they made?—No, it did not; because they varied the valuation. The valuation before the Court of Appeal was a lower one than ours, so they did not actually raise it to the amount that they should have raised it if they had merely added on our deduction for the fine.

Mr. *T. W. Russell.*

1139. There are two other cases that I want some information upon; is that case reported?—Yes, that case is reported in 26, "Irish Law Times," page 432.

1140. Do you know the case of the Rev. Mr. Mairs? Did you hear that case?—Yes. Mairs *v.* Leckie. Mr. Mairs is, I think, a Presbyterian clergyman in the north of Antrim. I have not got the facts of the case here.

1141. Will you allow me to ask the questions, please. Mr. Mairs took this land under a fee-farm grant, did he not?—Yes, under a fee-farm grant.

1142. Was it given in evidence before you that he had reclaimed the land to a large extent?—Yes; I remember the case.

1143. One moment, just give me the answers now; you can explain it afterwards. He had reclaimed a large quantity of the land, had he not?—Yes.

1144. Had he built a manse upon it?—Yes.

1145. At his own charges; at his own cost?—Yes.

1146. That was established before you that he had reclaimed this land, and built this house?—Yes; that was undisputed.

1147. What was the rent?—18*l.* was the old rent.

1148. What did you reduce it to?—We reduced it, I think, to 11*l.* or 12*l.*; 11*l.*, I think.

1149. You stated in your judgment, I believe, that you declined to put anything upon the expenditure for the manse or the reclaimed land; that is the view of the law you took?—The view of the law which I took was that, as Adams *v.* Dunseath did not apply to fee-farm grants, the rules laid down in Adams *v.* Dunseath limiting the claim for allowance with regard to improvements did not apply to a fee-farm grant; consequently that the tenant was entitled to the improvements he made under the rent.

Mr. *T. W. Russell*—continued.

Mr. *Carson.*

1150. Was not this manse built under the fee-farm grant?—Yes; the improvements were all made under the fee-farm grant; that is what I held.

1151. Even if Adams *v.* Dunseath applied, what difference would that make?—That was the whole question.

1152. I mean as to the manse?—Well, such improvements made under a lease for 31 years, or over, can be allowed to a tenant under Adams *v.* Dunseath.

1153. They can?—Yes.

1154. Adams *v.* Dunseath really had no application, had it?—But that is what I held.

Mr. *T. W. Russell.*

1155. You reduced the rent to 11*l.*?—Yes, to 11*l.*

1156. Declining to put any rent upon the expenditure that was proved before you as belonging to the tenant?—Well, that was my view of the law.

1157. You were reversed upon that, were you not?—Yes.

1158. By Mr. Justice Bewley?—Yes; the Chief Commission.

1159. And what did he fix the rent at?—The rent was brought back, I know, to the old rent.

1160. In other words, Mr. Justice Bewley stated in court in his judgment, I believe, that in these cases the land had to be valued as it stood, and that everything upon it belonged to the landlord?—Well, of course, Mr. Justice Bewley was carrying out the principle that he had previously laid down in Kieran *v.* Mollan; he applied Kieran *v.* Mollan.

1161. I know that; but that is the effect of the judgment?—Yes.

1162. And Mr. Mairs had to pay rent upon the 400*l.* he had expended upon the manse, and upon the money that he had expended in reclaiming this land?—Yes; that is the effect.

Mr. *Carson.*

1163. How could that be on the figures you have given us. The old rent was 18*l.*; if he had to pay on 400*l.*, it would be under 5 per cent?—Not necessarily.

1164. If the old rent were only 18*l.* there cannot have been much rent put upon the manse?—I do not know what Mr. Justice Bewley's figures were.

1165. It was 18*l.* before the manse was built, and they only put it back to 18*l.*?—Yes, in his judgment. I cannot tell what percentage he may have put on the improvements.

Mr. *Sexton.*

1166. You hold that 18*l.* to be an excessive rent, without the improvement and buildings?—Yes, we held that the fair rent was 11*l.*, excluding the improvements.

1167. What

Mr. *Fuller.*

1167. What is the date of this?—It was some months ago, I think, when the Commission had their last sitting in Belfast.

Mr. *Carson.*

1168. Is that case reported?—I do not know whether it is reported or not.

Mr. *T. W. Russell.*

1169. Now I come to a sub-letting case. Under the same Act you decided the case of Mr. Kennedy, near Ballymena?—Yes.

1170. Kennedy, and what was it?—I do not know; I forget the name of the landlord.

1171. Do you know the case at all?—Yes, I remember the case.

1172. He is a very substantial farmer, is he not?—Mr. Kennedy is a well-known land valuer in Antrim; he values for tenants in a very large number of cases in Antrim.

1173. He is a substantial farmer, is he not?—Yes.

1174. What was the rent under the fee farm grant, or the perpetuity lease, I think it was in that case, was it not?—It is some time ago since I decided that case, and the figures I really could not say, I have not them in my memory.

1175. We will pass from the rent, because the sub-letting is the real point. You fixed a fair rent for him, did you not?—We did.

1176. Are you aware that you have been reversed upon that?—Yes; that is the case, as far as I remember, in which there were a number of sub-lettings to workmen and labourers employed in the locality.

Mr. *Carson.*

1177. Is that Kennedy *v.* Essex that you are speaking of?—No. There were a number of sub-lettings of houses, which Mr. Kennedy had built on his holding, to persons employed in the locality, I forget how many, five or six of them, or more, perhaps, and there was no land, as far as I remember, attached to those houses.

Mr. *T. W. Russell.*

1178. At all events you have been reversed, and he is put back to his old rent?—I cannot tell the result in figures, but I know that he has been dismissed out of court.

1179. On the question of sub-letting?—He has been dismissed out of court.

1180. Has he been dismissed out of court on the question of sub-letting?—Yes.

1181. Now let me put this to you: you have had considerable experience in Ulster?—Yes, I have.

1182. Is not this the case, that where there are scutch mills, which are absolutely necessary for the farmers who grow flax, it is necessary to build cottages for the people working in those scutch mills?—Yes, undoubtedly.

1183. And because a farmer provides accommodation for the labourers in the scutch mill or on his farm he is ruled out of all the advantages of the Land Act because he has to sub-let to these people; is not that the case in Ulster; have you not found it so?—Oh, yes; we have dismissed several cases where there have been

Mr. *T. W. Russell*—continued.

sub-lettings to working men and labourers on the holdings, on the ground that such sub-lettings were not trivial.

Mr. *Sexton.*

1184. What was the conflict of principle between yourself and the Chief Commissioner?—As to the triviality; I held that, in that case the sub-lettings being merely of houses built by the tenant himself (the houses were built by the tenant himself, and they comprised, practically, none of the land), they were trivial; and, consequently, I looked upon them as trivial sub-lettings.

1185. You would have admitted them under the Act of 1887?—Quite so.

Mr. *T. M. Healy.*

1186. I suppose that will go to the Court of Appeal yet?—Well I expect it will; of course the Court of Appeal in its last decision on sub-letting has widened it a little.

Mr. *T. W. Russell.*

1187. Now on the question of Adams *v.* Dunseath, of course, it is very difficult for those who are not lawyers to follow all that has been said here to-day; but will you allow me to put this case to you? Is this your procedure under Adams *v.* Dunseath; let us assume a case as brought before you for hearing; it is proved that a tenant has expended, say, a hundred pounds on improving a holding; that the expenditure of the tenant has increased the letting value of the land from, say, 10*s.* to 15*s.* an acre; is it the law that you will simply deal with the hundred pounds that the tenant has expended (that you will simply give him credit for that), and that the whole of the increased letting value consequent upon the tenant's expenditure goes to the landlord?—Yes.

1188. That is the law now, is it?—That is the law; he merely gets the money value of the work done.

1189. And the whole of the increased letting value consequent upon that expenditure goes to the landlord?—Quite so.

1190. You are not at liberty to give the tenant any credit for it?—No.

Mr. *Carson.*

1191. He has no rent put upon anything he does, has he?—Not upon the actual work done.

Mr. *Sexton.*

1192. How do you translate a capital expenditure of a hundred pounds upon improvements suitable to a holding into annual letting value; what allowance do you make?—You have to put on a rate of interest which varies according to the nature of the improvement Of course on some improvements your return will be spread over a very much longer period than on others, and we have to vary our rate of interest in accordance with the length of time that the improvement will last.

Mr. *Fuller.*

1193. If this hundred pounds made out of improvements is expended by the landlord,

Mr. *Fuller*—continued.

would that increase the letting value of the land? Would that hundred pounds be calculated as a means of increasing the value of the land, if that hundred pounds was laid out by the landlord?—Oh, yes; if the 100*l.* was laid out by the landlord, and if it increased the letting value of the land, the landlord would, of course, get the return also; we would give him, then, the value of the land in its improved condition.

1194. Do you take into consideration what that 100*l.* has done towards improving the letting value of the land. You would take that into consideration, would you not?—Yes.

1195. But if the hundred pounds is laid out by a landlord in buildings, you would not take that into consideration as improving the letting value of the land?—We take it into consideration so far as to allow him a percentage on the 100*l.*

Mr. *T. W. Russell.*

1196. But not on the increased letting value?—Not on the increased letting value.

1197. That is my point?—The 100*l.* may create an annual return far greater than the interest on it; for example, we will suppose that the interest on the 100*l.* at 5 per cent. would yield a certain return; but the land may yield far more than that.

Mr. *T. M. Healy.*

1198. If you drain a thousand acres of bog, would the value go to the landlord?—Yes; that is what it comes to.

Mr. *Sexton.*

1199. This seems to be the point: if the landlord expends the 100*l.*, the whole increased letting value resulting from the expenditure of the 100*l.* is the property of the landlord?—Yes.

1200. But if the tenant expends the same sum of 100*l.*, no matter how much that expenditure has increased the letting value of the farm, suppose to the extent of 10*l.* a year, you will give him a percentage say of 3 per cent. upon his 10*l.*, leaving the other 7*l.* due to his expenditure to become the property of the landlord?—Quite so.

Mr. *W. Kenny.*

1201. In the case put by Mr. Sexton the tenant has got the benefit of the improvements during the time he has been in occupation, has he not?—Quite so. In both cases the increase in the letting value, over and above the costs of the improvement, goes to the landlord; but in the case of the landlord making the improvement, he also gets, of course, the percentage on the actual money he has spent; and that is what the tenant would get on his side.

Mr. *Sexton.*

1202. The landlord gets the whole increased letting value, does he not?—Yes; and that includes the percentage on that 100*l.*, which we will suppose that he spent, as well as the increased letting value, if any, which arises from the inherent capacities of the soil.

Mr. *T. M. Healy.*

1203. Suppose the money is gone naturally in the business, that it belongs to the board of works, and is made a drainage loan, what do you do?—Of course, as a rule, if the tenant gets the loan from the board of works it is the tenant's improvement.

1204. Suppose it is a landlord's improvement under the old Acts, it is afterwards added to the rent, that is if not specifically ear-marked as a board of works loan, but added to the rent, in fact; what do you do?—Of course the landlord there gets the benefit.

Mr. *Clancy.*

1205. You were not right in what you said to Mr. Sexton just now, I think, were you; you said that the whole of the increased letting value included the percentage; you meant that the percentage is in addition to the increased letting value, did you not?—The percentage on the money expended in making the improvement?

1206. Yes?—Of course we must deduct from the increased letting value the percentage on what it takes to make the work.

1207. When you said to Mr. Sexton that the whole of the increased letting value went to the landlord when he spent the money, and when you said that it included the percentage, you did not mean that; you meant that the percentage was in addition to it, did you not?—Oh, no; we would not give the landlord any percentage in addition. What we would do would be this: If the landlord spent a hundred pounds on draining a certain amount of land, that expenditure of a hundred pounds would increase, you may take it, the annual value of the land by a certain amount; we then would value the land at its increased letting value arising from the making of the improvement, and of course the landlord gets the benefit by getting a higher letting value put on his land.

Mr. *T. W. Russell.*

1208. Now as to the presumption of the ownership of the improvements; how does that work out in actual practice? I will take the case of a small farmer in County Antrim, County Tyrone, or any other of those counties where you sit; he comes before you asking to have his rent revised; he files a schedule of improvements, I understand?—Yes; that is, if it is over 10*l.* valuation.

1209. Of course, if it is over 10*l.* valuation. Now assume that that schedule is before you, how do you proceed, I mean, as Chairman of the Commission; do you, in court, decide which of those improvements belong to the landlord and which to the tenant, or do you leave your Sub-Commissioners, when they go upon the holding, to decide it?—Oh, no; we decide that in court. Of course that is the time to decide the matter of law, for it is a matter of law as to whether any of those improvements are the property of the tenant or the property of the landlord. If the landlord wishes to raise the contention that some of these improvements are his property, owing to any of the rules laid down in the 4th section of the Act of 1870, or under Adams *v.* Dunseath, or for any other reason, I decide then and there which of those improvements are to be taken into account in deduction from the rent, and which are to be rented as part of the property of the landlord.

1210. What

Mr. *T. W. Russell*—continued.

1210. What is the presumption in regard to improvements?—Well, the presumption out of Ulster, that is where there is no Ulster tenant-right on the holding, is that the improvements are made by the tenants, subject to these various provisoes that I read some time ago; that is, that they were made within 20 years from the passing of the Act of 1870; that there was no lease on the holding, that the valuation is under 100*l.*, and so on. "Presumption" is limited by those various rules, but in Ulster there is no limit to the presumption.

1211. What is your experience as regards improvements throughout Ireland, as to who makes them?—Of course in the great majority of cases they are made by the tenants undoubtedly.

1212. That is admitted, is it not?—I think so; I never heard it disputed.

Mr. *Sexton.*

1213. What does the evidence before you in court show?—Oh, in the great mass, especially of small cases, the improvements are invariably made by the tenants.

Mr. *T. M. Healy.*

1214. Lord Cowper's Report is decisive upon that point, is it not?—Yes.

Mr. *T. W. Russell.*

1215. Do you think it would be any hardship to make the presumption regarding improvements in favour of the tenant, that is, unless proved otherwise, that they should belong to him?—The presumption at present is that way, subject to the exceptions.

1216. The exceptions are very considerable, are not they?—They are; in a large number of cases, of course, they annul the presumption.

1217. Do not they put very great difficulties in the tenant's way in proving these improvements?—They do.

1218. Do the Irish farmers generally keep books, for example, or accounts?—No, not the smaller ones.

1219. Do you find that the Irish tenant, as a rule, keeps either books nor accounts?—No.

1220. Of course, I know there are exceptions; do you find that in court? I am asking your experience?—Well, I cannot say that I can recollect a case where a tenant produced books with any record of his improvements.

1221. Now, is it not the case that a landlord, if he has made any improvements upon a farm, will have that record in the estate office and be able to prove it conclusively?—Well, I could not say that there is any general rule. On the big estates, the well-managed estates, undoubtedly books are kept in which a record is laid down of the various improvements that have been made or allowed for. That is the case, of course, on all the well-managed estates.

1222. Do you think there would be any real hardship if in cases of improvements, taking Ireland as it is, the presumption should be in favour of the tenant, leaving the landlord to prove from his books and from his papers in the office that they were his; do you think any real hardship would be wrought to the landlord by

Mr. *T. W. Russell*—continued.

that?—Of course it is difficult to answer the question generally. There are plenty of individual cases where undoubtedly hardships would arise as they do at present. Hardships now arise in many cases where the tenant is unable to prove his improvements owing to the absence of records; on the other hand, it is quite probable that hardship might arise on an estate where improvements have been done and the records have been lost. It is difficult to say that in all cases it would do away with hardship.

Mr. *M'Cartan.*

1223. May I ask you, in your experience in Ulster, how many such cases have you met with of hardship to the landlord by his inability to produce records?—I do not know of any; I can only tell you what I know, of course.

Mr. *Macartney.*

1224. Do you require written evidence of the tenant's improvements; is not parol evidence, if proved or uncontradicted, sufficient to satisfy the Sub-Commission?—Yes, it is; if the tenant can give clear parol evidence that he has seen certain improvements made; but where the great difficulty arises is, that a tenant begins to prove improvements by saying that his father reclaimed so much land, then it turns out on cross-examination that his father told him so, that he never saw it done, and we rule that out.

1225. The ordinary parol evidence accepted in a court of law is sufficient to satisfy you, is it not?—Yes.

Mr. *T. W. Russell.*

1226. You say that when a tenant comes into court and declares that his father made certain improvements, and that he did not see them done, of course it is pure hearsay, and you must rule it out; but suppose you have evidence that the improvement was actually made, do you still rule him out?—Yes, we can only allow the improvements that he proves. Of course the question of presumption arises there.

Mr. *Carson.*

1227. Surely under the Act of Parliament, as regards the reclamation of waste land or permanent buildings, you must presume that they were made by the tenants?—Unless those exceptions come in.

1228. What exceptions are there in the case of waste lands or buildings?—In the case of the reclamation of waste lands or buildings, they are still subject to the actual proof of doing.

1229. Surely there is a presumption in favour of the tenant in the case of the reclamation of waste land?—Under what?

1230. Under the Act of 1870?—There is the ordinary presumption that I spoke of.

Mr. *Sexton.*

1231. As to the general presumption, I should like you to give us some guidance. I understand from you that experience shows that the improvements are ordinarily made by the tenants. Now, as between the 300,000 tenants who go into court (or the 200,000) on the one hand, who keep no accounts; and, on the other hand, the five or

Mr. *Sexton*—continued.

six thousand landlords who have accounts and skilled agents, on which side would you say it is expedient that the presumption should be as to their making the improvements?—Of course it seems undoubtedly the case that if the presumption is against the larger class the grievance is on the larger class; if now the larger class are debarred from geting the advantage of their improvements by the difficulty of proof, then undoubtedly the grievance is on them.

1232. Are the tenant class, the class that is the worst equipped to offer legal proof on account of their illiteracy and keeping no accounts?—That follows.

Mr. *T. W. Russell.*

1233. On the question of sub-letting, do you find from practical experience great hardships arising from the exclusion on this ground?—All I can say to that is that we exclude a large number of cases; of course, I suppose it will follow that it is a hardship, at least, that they will think it a hardship when excluded.

1234. As to the question of triviality, that arises under the Act of 1887, does it not?—Yes, under the Act of 1887.

1235. Now, how do you decide, I mean practically, that a sub-letting is trivial?—Well, that is a question which must be decided in each particular case with the best guidance we can get from the decisions of the Court of Appeal, and these decisions of course vary somewhat.

1236. But you are quite sure that a very large number of cases are excluded on the ground of the tenant not being in *bonâ fide* occupation of the land?—Oh, yes, undoubtedly.

1237. Now I come to the question of Town Parks; the law as regards town parks has been considerably changed, has it not?—Yes.

1238. Have you any suggestion to make that would help the legislature in deciding what admittedly is a very difficult question in regard to these Town Parks. We sit under a reference which enables us to make suggestions both in

Mr. *T. W. Russell*—continued.

law and practice. The Town Parks question is a question of great difficulty; have you any suggestion to make upon it? Have you turned over in your own mind, from your experience in different parts of Ireland, what ought to be done to put that matter on a proper foundation?—Of course I have always considered that with regard to Town Parks the class of cases that should be excluded are cases of lands that are not really let for agricultural purposes; that the test should be: is the holding let merely for the accommodation of a resident in a town, or is it let for the purposes of making profit by farming; and I think that is about the true test.

1239. You draw a distinction, do you, between land let for accommodation purposes, and land let for ordinary farming purposes?—Certainly.

1240. And I understand that what you mean by "accommodation land" would, practically, amount to this, the case of a shopkeeper in a town who rented a field for the purpose of keeping a couple of cows, perhaps, for the use of his house; is not that what you mean by "accommodation land"?—Yes; or a garden.

1241. That is what you call "accommodation land," is it?—Yes, undoubtedly.

1242. You distinguish between that and an ordinary agricultural holding?—Quite so.

1243. Have you any suggestion to make as regards the vexed question of what is a "town"? Well, of course if you do not accept the definition laid down by the Lord Chancellor and the present Court of Appeal, namely, any great collection of houses having a demand for accommodation land, the only other test you can have is one of population, and unless you introduce a population limit, I do not see what other test you can apply.

1244. I understand now, as Mr. Sexton put it before, that any collection of houses, at a cross-roads even, is ruled to be a town if it creates a demand for accommodation land?—Yes; the whole thing turns on the creation of the demand for accommodation land.

Tuesday, 8th May 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. Robert Reid.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HON. JOHN MORLEY, IN THE CHAIR.

Mr. W. F. BAILEY, again called in; and further Examined.

Mr. *T. W. Russell.*

1245. I WANT to ask you some questions on the Ulster custom. Could you give the Committee a convenient definition of that custom; has your attention been directed to Mr. Blake's definition, for example, on page 150 of Mr. Cherry's book?—Yes, it has.

1246. Will you read that definition?—Mr. Blake, who was the chairman of the county of Fermanagh, in a case of "Graham *v.* Earl of Erne (Donnell's Reports, page 405)," states the "five leading features" of the Ulster custom as follows:—"1st. The right or custom in general of yearly tenants, or those deriving through them, to continue in undisturbed possession so long as they act properly as tenants and pay their rents. 2nd. The correlative right of the landlord periodically to raise the rent, so as to give him a just, fair, and full participation in the increased value of the land, but not so as to extinguish the tenant's interest by paying a rack rent. 3rd. The usage or custom of the yearly tenants to sell their interest, if they do not wish to continue in possession, or if they become unable to pay the rent. 4th. The correlative right of the landlord to be consulted and to exercise a potential voice in the approval or disapproval of the proposed assignee. 5th. The liability of the landlord, if taking land for his own purposes from a tenant to pay the tenant the fair value of his tenant right."

1247. Is that generally accepted as a fair definition of the Ulster custom?—Yes.

1248. By lawyers?—Yes, that is generally considered a fair definition. I may add the definition given by the present Master of the Rolls (Mr. Porter) in the reported case of M'Elroy *v.* Brooke, 16 Law Reports, Ireland. His definition is this: He says,—"The 'essentials' of the Ulster custom" are "the right to sell; to have the incoming tenant, if there be no reasonable objection to him, recognised by the landlord, and to have a sum of money paid for the interest, and the tenancy transferred, I think" (he says) "if any of these ingredients are absent the essentials of the Ulster Tenant Right custom are wanting."

Mr. *T. W. Russell*—continued.

1249. Is this custom universal through the Province of Ulster?—No, it is not credited to any particular tenant unless he can prove that the custom is one that appertains to his holding; that is, if the question is raised on the other side, the onus of proof is on him to prove that his holding is subject to the custom. That arises from the words in the 1st Section of the Act of 1870, which legalised the custom.

1250. Then there are different usages throughout Ulster upon the matter?—Yes; there is no universal custom which pertains to every case. On different estates different usages prevail. The plural word "usages" is used in the 1st Section of the Act of 1870, which legalised the custom.

1251. Now, can you tell the Committee, shortly, in what way the Ulster custom operates as against the ordinary law. In what way is the Ulster tenant advantaged by the Ulster custom?—Under the Act of 1881 the tenant of the Ulster custom-holding has got certain advantages that are not given to tenants who do not possess the benefits of the custom. In the first place the 1st Section of the Act of 1881, which deals with free sale, provides certain conditions which must be carried out by the tenant if he wishes to sell his holding under the Act. These conditions, if not complied with, may render the sale void. In the case of an Ulster custom-holding the tenant is not obliged to comply with those conditions. He can sell under the custom. It also follows, as regards the tenant of an ordinary tenancy which is not subject to the Ulster custom when getting his rent fixed, the landlord may require that the specified value of the tenancy should be fixed at the same time as the rent has been fixed. If the tenant, at any time during the continuance of the Statutory term, wishes to sell his holding, the landlord has the right to pre-empt at the particular specified value fixed at the beginning

Mr. *T. W. Russell*—continued.

beginning; but that is a provision which does not apply to an Ulster custom-holding; no specified value in such case can be fixed. Then another difference between the Act of 1881, as applying to Ulster custom cases and other cases is that the provisions of the 4th Section of the Act of 1870, which apply to a claim for improvements in the case of ordinary tenancies, do not apply to Ulster custom cases; that is, these various provisoes which limit the claim for improvements in the cases of leaseholds, and the cases of improvements more than 20 years old, and so forth; these provisions do not apply to Ulster custom cases.

1252. After the custom is proved of course?—After the custom is proved.

1253. Is there anything else? — Then the question of presumption as to the ownership of improvements is more in favour of the Ulster tenant, than of the tenant not subject to the custom. The presumption in the case of an Ulster custom holding, is that the improvements are made by the tenant, and are his property. There are a great number of exceptions to the presumption in the case of non-custom tenants.

1254. The exceptions do not apply on a holding where the custom is proved?—The legal presumption, as laid down in the 5th Section of the Act of 1870, does not apply.

1255. Now passing from that, and going to the question of turbary, will you tell the Committee how the Sub-Commissions deal with turbary when they are fixing rents. Of course turbary is a necessity of the holding?—Where it exists. In a great many parts of Ireland the turbary is either non-existent or is cut out; but where the turbary does not exist we have in the first place to find out whether the landlord means to have turbary attached to each case, and we in fixing our rent must, of course, take that into account; and we increase the rent where there is that right of turbary attached; and that is a question we have to consider in each case as it arises.

1256. Now take a case were the landlord separates the turbary altogether from the holding, have you had any of these cases?—Oh, very frequently. If the landlord objects to have turbary attached to the holding, and if the tenant is not able to satisfy us in Court that the turbary is appurtenant to the holding, that it is a right attached to the holding, of course we have then to fix the rent without turbary.

1257. Does this happen in these cases: A fair rent is fixed upon the land itself; upon the farm; without any regard to turbary?—Yes.

1258. Well, turbary is almost a necessity in most parts of Ireland, is it not, for the farmer?—Well, of course it is the chief fuel in the west and central parts of the country.

1259. Then in those cases the landlord can exact whatever rent he chooses for the turbary?—Well, we simply, in such cases, ignore the turbary.

1260. You ignore it, and therefore the landlord and the tenant must make a bargain between themselves for the turbary?—That is so, as far as we are concerned.

1261. That is if the tenant is to use it?—Yes, we have nothing more to say to it; it is outside the fair rent we fix, and, of course, it is then a matter of contract between them.

1262. Then under the law as it stands, it would be perfectly possible for a landlord, by letting turbary to recoup himself for anything the Land Commission may strike off the rent?—Well, that is possible.

1263. Are you familiar with the case of Flannery *v.* Nolan?—Yes.

1264. May I ask you if this is the law as decided by the Court; I take a case from the county of Kildare as illustrating it; a man takes a lease, in that lease there are three sub-tenants conveyed in the lease; he comes under the Leaseholders Act to have a fair rent fixed, and he is ruled out because these sub-tenants are not his, but the lessors?—Yes; of course, in Flannery *v.* Nolan, it was a dictum of Lord Justice Fitzgibbon's that a lease of the reversion was not a sub-letting. He held, in such a case as you describe, where the sub-lettings were in existence at the making of the lease, that the tenant merely got a lease of the reversion to the sub-tenancies, and that consequently the possession of those sub-tenants was not created by the tenant applying, and that consequently no consent on the part of that landlord could validate the sub-letting so as to bring the holding within the Land Acts.

1265. At all events, in all such cases they are out of Court?—Yes, the tenant is out of Court.

1266. We have had it that the claim for improvements is made on a schedule?—Yes.

1267. Is it on the back of the originating notice?—It is on the back of the notice.

1268. You have told us already that the Irish tenant farmer does not keep books or accounts as a rule?—Not as a rule.

1269. Not as a rule?—No.

1270. Do you, in your experience, frequently find that these Schedules are not accurate; that is that the improvements are not accurately defined on the back of the originating notice?—Very commonly.

1271. Now tell me what happens in this case: supposing that your Sub-Commissioners go upon the land to inspect it and they find the improvements are of greater value than have been enumerated on the back of the originating notice, what happens?—We only allow the improvements that have been put on the notice, and that have been proved in Court.

1272. Although your inspectors find that the improvements are of greater value than the amount proved in Court, or stated on the back of the originating notice?—Quite so.

1273. You have no power to deal with the actual facts?—Except in the case of an application made by the tenant to have the case adjourned in order that he may serve a new schedule of improvements. That point is governed by one of the rules made under the Land Act; the rules of 1883. It is the 108th rule at page 547 of Cherry's book.

1274. Of course that means new expenses to the tenant, does it not?—In the case of any holding valued at, or over, 10*l.*, the tenant must endorse on the notice "the particulars of any improvements

Mr. *T. W. Russell*—continued.

provements in respect of which evidence is intended to be produced, or which are intended to be relied on by the tenant, as having been made by him or his predecessors in title, with the dates at which the same were made according to the best of the tenant's knowledge or belief."

1275. The Court has not power to amend?—Not if objection is taken, unless we give time to have the tenant serve a new Schedule.

1276. There must practically be a rehearing of the case?—Well, an adjournment.

1277. An adjournment of the case?—Yes.

1278. Of course that means expense to the tenant?—It of course means delay and whatever expense there may be.

1279. Now as to costs; what do you find is the average cost of an application, say, upon a holding valued at 10*l.*?—Well, there is a schedule of costs laid down by the Land Commission which governs the question of costs. That schedule of fees you will find in Cherry's book, pages 586 and 587; there it is laid down (on page 587) that the cost in a fair rent application shall be as follows: "Where application is made to fix a fair rent: for all proceedings from the originating notice to the final order of the Court. Where the rent stated in the originating notice does not exceed 5*l.*, the fee is 10*s.*"

1280. Does that include solicitor's fee?—That is the solicitor's fee.

1281. Do you find that a large number of these cases are heard without solicitors now?—In the west of Ireland and in the midland parts, in the counties of Leitrim and Cavan and those districts, a very large number of small cases are heard without solicitors.

1282. Then what is the cost in that case?—Of course there the only costs is the cost of the valuer or surveyor that the tenant may produce if he produces such.

1283. I believe the cost is regulated by the rules also; is that included?—There is a schedule of fees for professional valuers too. It is laid down on page 589 of Cherry: "Fees for professional valuers. Where the rent of holding is under 30*l.*, 10*s.* 6*d.*," and so on.

1284. Do you find complaints as to the delay in the hearing of the cases?—Not now. There were great complaints some years ago, but of late I have been hearing cases for last year in which the notice had not been served more than three months in a great number of cases.

1285. I understand you have very nearly worked out the fair rent cases, have you not?—No, they are coming in very constantly yet. We constantly clear out all the applications in a county, and some time afterwards a new list has been worked up.

1286. Do the farmers complain about the long distances they have to travel to these courts sometimes; what arrangements do you make in regard to their convenience, because, I presume, you try to convenience the parties?—The cases are always listed according to Poor Law Union. In Ireland the Poor Law Unions are so arranged as to comprise the lands or electoral divisions round some market town that is, as a rule, used by the country people for market purposes. As a rule we sit in that market town

Mr. *T. W. Russell*—continued.

for the hearing of the cases which are listed in the Union, and in some cases where we find a large number of applications come from one corner I may say of the Union, we arrange to sit in that place. For example, last month I had a very large list of cases in the Poor Law Union of Cavan; a great number of these cases lay about Belturbet, which is about some 10 miles or so from Cavan, and instead of sitting in Cavan for the hearing of them, we went to Belturbet and heard them there within a mile or two of the holdings.

1287. You try to meet the convenience of the parties?—Yes, in all cases we sit as near the holdings as possible.

1288. When you make a list do you bring the farmers in that day, and make them come the next day and the next until their case is finally decided, or do you simply list the cases likely to be heard that day?—Each Commission is, I suppose, worked in its own method, but my system is to notify as many cases as I think are likely to be heard on each day, so that as a rule, almost invariably, we hear all the cases notified on that day for which they are summoned.

1289. You have no power to deal with arrears of rent?—No.

1290. Are you aware that the Scotch Commission has?—Yes.

1291. Do you think that the absence of that power in the Act prevents tenants coming in to have a fair rent fixed?—I think in certain cases it does; at least, I have cases before me where, on cross-examination, it is a constant question asked by the solicitor: "Tell me why you did not come in before—why you have waited so long in coming in to get your rent fixed"; and the answer very frequently is that there were arrears of rent which prevented him from coming in. Of course, that is the only way I have of knowing.

1292. Of course, the question of arrears does not prevent them coming in?—Oh no, certainly not.

1293. But coming in may be followed by certain results; that is the ground you think?—That seems to be their fear.

1294. You have found that in your experience?—Yes, I have.

1295. Now, about the question of new procedure; we sit, as you know, under a reference which enables us to make suggestions both as to law and practice. Have you contemplated the new era after the first leases expire; have you any idea as to what will take place then, or what ought to take place; would you go round just the same way again for the next 15 years?—Well, of course, I think, as I said on the last day I was here, that probably the most satisfactory way of hearing fair rent cases is the present method of having an inquiry before a competent tribunal, by which the evidence can be sifted, and in which the holding can be subsequently inspected by two members of the Court who have the power of testing the evidence and making a valuation for themselves. Of course, if that method is considered too complex for a number of the smaller cases, it is possible to devise a system which would enable the non-contentious cases to have rents fixed without such

Mr. *T. W. Russell*—continued.

a hearing. I would on no account think it advisable that in cases in which any contention as regards the ownership of improvements or the status of the tenants arose should be dealt with, or that a rent should be fixed on the holding without a preliminary hearing, as I think it would in the long run only lead to more trouble, great confusion, and more expense; but I think it would be possible, in the case of small tenancies, to require that, on the notice served requiring a revision of the rent, an endorsement should be made of the improvements claimed, which notice, of course, with the endorsement, should be served on the opposite party; and if the opposite party had no claim or objection to that schedule of improvements, it would be considered non-contentious; if he had an objection he should serve it; if he had not, the case should be treated as a non-contentious one, and it might be sent down to a single valuer, who might make a valuation with a schedule endorsed upon it. In that way the rent might be fixed. If that were not objected to within a specified time, it might be the rent for the statutory term; but if any objection were taken to it, I think it should be listed in the ordinary way before a sub-commission. Of course, it might be provided in such a case as that that no appeal might be allowed from a sub-commission as a previous valuation had been made by a single valuer; but if any subject of contention was raised, I think that undoubtedly in such a case the parties should, in the first instance, be sent to a sub-commission.

1296. In other words, you think that there are a certain number of what you call non-contentious cases that could practically be decided upon the report of a single valuer; but that in all cases where questions of improvements or the status of the tenant came up, you would maintain the Court as it at present exists?—Certainly.

1297. Have you formed any opinion as to giving an appeal on the question of value?—I think in the cases I have mentioned (those cases that in the first instance were to be regarded as non-contentious cases) that there it might be advisable not to give an appeal on the mere question of value, as in the first instance, the holding, being regarded as non-contentious by both landlord and tenant, was valued by a Land Commission valuer, and subsequently had a rent fixed by a sub-commission; I think in such cases it might fairly be provided that there should be no appeal.

1298. I am speaking more widely than that. Do you think the present plan of appealing on the mere question of value apart from law is a good plan?—I prefer not to express an opinion upon that, as the appeals are naturally from myself, and I do not want to have it thought that I object to an appeal.

1299. Not on value; the appeals are mainly upon law?—Appeals are often from my commission on value; I am responsible.

1300. Mr. Commissioner Fitzgerald told us that, on the Sub-Commissioners' Report, the amount of rent that they allow for improvements was not stated?—Yes.

1301. Is there any reason why that should be withheld?—No, I do not see any reason why it should be withheld.

1302. You see no reason why it should be withheld?—I see no reason why it should be withheld.

1303. The Sub-Commissioners' Report I am speaking of; that is the pink paper, is it not, that was handed in?—Yes, the pink report. I think it would be satisfactory to both landlord and tenants to give the amount of money that was allowed off the rent as against improvements.

Mr. *Sexton.*

1304. The amount is only in the Field-book, is it?—On the present pink report we only state the improvements we have allowed, and not the money value which we have attached to them.

Mr. *T. W. Russell.*

1305. Do you remember me referring to the case of Mr. Andrew Kennedy of Ballymena, a subletting case?—Yes.

1306. Have you got the file of that case here?—Yes, I have.

1307. I must trouble you to go back to Andrew Kennedy's case; you had not the facts when I asked you before about them. He was excluded because of subletting, was he not?—Yes.

1308. He held under a fee farm grant, did he not?—Yes, he held under a fee farm grant.

1309. Can you tell me what his rent was when you heard the case?—His rent was 60*l.*

1310. Was there proved before you any previous rent there had been on the holding?—I see in the schedule that about 1870 the rent was raised on the fall of an old lease from 14*l.* 17*s.* 3*d.* to 60*l.*

1311. That is a pretty considerable rise; what was the date of the old lease?—The rise was made in 1870; it was on the fall of an old lease, but I have not the date of that lease. That is all the information that is given on this schedule.

1312. What rent did you fix?—We fixed a rent of 34*l.*

1313. £.14. 17*s.* 3*d.*, 60*l.*, and 34*l.*; practically, these are the three figures?—Yes.

1314. And Mr. Justice Bewlay ruled that the subletting was not "trivial," and therefore put him out of court, and he is paying his old rent of 60*l.*?—Yes.

1315. You decided that the 34*l.* was a fair rent?—Yes.

1316. Was the lease produced in court?—His grant was produced.

1317. Did it contain the words "to Andrew Kennedy and his under-tenants." In other words, was the sub-letting sanctioned by the landlord in the grant?—As far as I remember the case that is so. Of course the lease or grant is not on the file; but, as I remember the case, those words were contained in it.

1318. Those words were contained in it?—Yes.

1319. And therefore Mr. Kennedy had not violated any covenant at all in erecting these cottages for his labourers?—No.

1320. The

Mr. *Sexton.*

1320. The Legal Sub-Commissioners, I believe, are barristers, are they not?—There are three barristers and one solicitor.

1321. Have they all had substantial practice in the profession?—Yes, at least so far as I am aware.

1322. What is the qualification of the Lay Sub-Commissioners?—A practical acquaintance with the value of land, is, I think, what is laid down in the rule under which they are appointed.

1323. From your knowledge can you say how they acquired a practical acquaintance of the value of land; was it as landlords, or as land agents, or as tenants?—In many of the cases, speaking for the members that I know myself personally, and their antecedents, they acquired it by farming large quantities of land; but, of course, I cannot speak for the entire body of them. Each man, of course, has his own qualifications. I think there was a return made to the House.

1324. There are six of them, associated directly with you, I think?—There are; yes.

1325. How did they acquire their practical knowledge of land?—I have got three pairs. I know that of each of those pairs, one, at least, has acquired his knowledge as a farmer in Ulster; and the other three, I think (some of them farmed largely, too) were agents or landlords.

1326. Their main interest in connection with land was the receipt or collection of rent, was it?—I would not like to say; it is only hearsay. I have no personal knowledge really of what their main interest was. I am only aware of this fact.

1327. Can you find their names on the return?—Yes, I can.

1328. It is important that we should know who they are?—Shall I give you the six gentlemen who are with me?

1329. If you please?—One of them is Mr. Samuel Byers, whose previous profession was that of a farmer engaged in the flax trade in the County of Armagh; he was tenant of a large farm. With Mr. Byers, at present, is Mr. Rice, who was a large farmer in the south of Ireland, and a member of the Duke of Richmond's Commission, a man of large experience. Then I have Mr. MacAfee on another wing, who was a large farmer in the County of Antrim, near Ballymoney. With Mr. MacAfee is Mr. Thompson; he is entered in this return as a farmer and land agent. The acreage of land that he returns as having farmed is 2,500 acres.

Mr. *T. W. Russell.*

1330. Does it say who he was agent for?—No, it does not. On the third wing of my Commission I have Mr. Thomas Davidson, who farmed largely near Moy, in the County of Tyrone, a farmer; and with him is Mr. John Golding, who managed farms and estates.

Mr. *Sexton.*

1331. How would you classify them, as between landlords and land agents and farmers, and those men who were farmers and nothing else?—Men who farmed and nothing else, and men who farmed and also have had the care of estates as agents or managers.

Mr. *Sexton*—continued.

1332. Are there any landlords simply, or anyone who is a landlord among the six?—Not on my Commission at present.

1333. I thought you mentioned one?—Two: Mr. Thompson and Mr. Golding. Mr. Thompson certainly farmed as well.

1334. I know; I am not putting that point to you. Were they landlords?—Yes, undoubtedly.

1335. How many were land agents?—Mr. Thompson and Mr. Golding.

1336. How many were farmers without being landlords or agents as well?—Mr. MacAfee, Mr. Davidson, Mr. Byers, and Mr. Rice.

1337. The three pairs of Lay Commissioners may be sitting at once, may they not?—Well, that happens very seldom, except at the commencement of a term when they sit for the first day only?

1338. It may happen for some days, then?—As a rule, I try to prevent it, because I make arrangements with them to sit for one day, and then that they should adjourn, having heard enough of cases that day to enable them to carry on the inspection, until I come; but of course I cannot tell what arrangements are made by other Commissions.

1339. We have heard that on some days at the beginning of the term, two pairs of Lay Commissioners may sit without the Legal Chairman?—Yes, that is so in certain cases.

1340. These are simply agricultural experts?—Yes.

1341. When the Chairman is not there, do they apply principles of law to the evidence?—The rule is, that if any question or principle of law is raised which will require legal consideration, they are required by the instructions issued to reserve such point for the Chairman when he comes at the subsequent sitting. Of course, as a rule, there are a large number of cases on which questions of value mainly arise, and they hear those; but even with those, if a question of law arises, they reserve it, at least they are required to.

1342. As a matter of fact, do the Lay Sub-Commissioners, without awaiting the presence of the Chairman, proceed to inspect, value, and determine the rent?—In certain cases, they do.

1343. So that the question of whether or not there was a question of law which they ought to have reserved, is one which they dispose of at their discretion?—Yes, of course; I may say this, that in many of those cases, they reserve the question of law, and ask the Chairman when he comes round to fix the rents, as to what his ruling is, on it. For example, a simple question may arise with regard to some claim for improvements, they may hear the case, but they may reserve the point for the Chairman and consult him when he comes round as to what they should have done.

1344. They reserve it?—They reserve it.

1345. They may reserve it?—Yes.

1346. Suppose any such question arose as, whether the tenant was a tenant at all, or whether he was such a tenant as could have a fair rent fixed, or whether the holding was a holding upon which a fair rent could be fixed, the case would rest with them to say whether they would reserve it or whether they were satisfied with their own decision?

Mr. *Sexton*—continued.

decision?—In my experience of such cases, they always have reserved it, always.

1347. After the hearing in the Court, without any public announcement, you sit together in private and agree to apply the law and the evidence to the value of the holding?—Yes.

1348. Upon every question of law, the question: Is this a tenant, is he a tenant who can have a fair rent fixed, is this a holding on which a fair rent can be fixed, and so forth, you lay down the law to the Lay Sub-Commissioners?—To the Lay Sub-Commissioners.

1349. And they take it from you?—Yes. There have been cases in which the Lay Commissioners have dissented from the Legal Commissioner; but, as a rule, they have been reversed on an appeal.

1350. Have they technically the right to dissent from you in law?—Technically each of the three members of the Court has a right to his own opinion, and sometimes two laymen do form an opinion on a point of law; but in my experience it generally has been reversed.

1351. But I suppose their appreciation of the prospect of dissent between a lawyer on one side and laymen on the other, on a question of law has led them to conform?—Yes; at least that is my experience.

1352. You instruct them before they visit the holding. What I call preliminary questions being determined as to the holding, you instruct them what improvements are to be held to have been made by the landlord and what by the tenant?—Quite so.

1353. And they take that law from you?—They take that law from me.

1354. Then they proceed to value the holding. We have been told that they may differ in opinion?—Yes.

1355. When they differ in opinion do they make separate notes?—They do.

1356. In any case they make separate notes, do they not?—In any case they make separate notes.

1357. Then they return and join you, or rejoin you?—Yes.

1358. Then your function is, upon the several elements of the report as to value, to fix the fair rent?—Yes.

1359. If they differ in opinion upon the point of value, or upon the main question of what should be the amount of the fair rent, how do you decide between them?—Well, as a rule, I look first to the evidence which has been given by the expert valuers in Court, and how far their evidence will bear out the opinion of either or both of the Lay Commissioners, and I may ask them what are the divisions into which they have divided the land according to quality, and how much rent they may have put on each of those divisions. I can test that then by the evidence that we have taken down in Court with regard to these different divisions, and, of course, I then come to the best conclusion I can in such a case as to which of them I should approximate to.

1360. Do you examine the views of the two Lay Commissioners by the light of the expert's evidence (the landlord's valuer and the tenant's valuer) in Court?—Yes, if I find the landlord's and tenant's valuers have really given evidence that will enable me to do so. Sometimes, of course, they will not give the evidence that will enable you to do so; but where they do, I certainly apply it.

1361. What is the usual result? Do you split the difference, or do you adopt the view of the one in preference to that of the other?—Well, in my case I never certainly adopt the plan of merely splitting the difference unless I think the two come comparatively near, and it is a matter as to which; the one may be right or the other may be right, and I have nothing else to guide me. If I have nothing else to guide me, of course, then I may split the difference; but that is not the rule.

1362. It appears from an answer you gave a little time ago that in the economy of this scheme the two Lay Commissioners may settle a question of law; and now it appears that the Legal Commissioner, who is not an agricultural expert, and who has not seen the holding, may override the opinion of the agricultural expert who has seen the holding?—Well, of course, the three of us are supposed to occupy the position of judges in that case, and we must decide it by a consultation, forming the best conclusion we can with regard to the evidence and the valuation.

1363. Just so; but it appears to be a part of the system that the farmers may lay down and the lawyers may decide about farming?—Of course the lawyer may decide about farming on the evidence that has been given in Court; not of his own knowledge, but on the evidence that has been given to him. He gets the evidence of experts.

1364. He does that, and overrules the judgment of the agricultural expert, who has also heard the evidence and has also seen the holding, which the lawyer has not seen?—Of course, as to the overruling, it must be remembered that there are supposed to be two agricultural experts, and he may overrule one of them, but not both of them.

1365. May he not, by splitting the difference, overrule them both?—Well, of course, if it comes to a matter of splitting the difference, it is quite plain that you cannot fix three rents, or you cannot fix two rents; you must adopt some method of coming to a decision.

1366. Exactly; and by the method that is adopted it is the lawyer, who has not seen the holding and knows nothing of farming, who by the scheme of the Land Commission has the power, in spite of the judgment of the two farmers who have seen the holding, to determine what shall be the value of the holding?—Of course; otherwise there would be no way of bringing them together; if they both form different valuations, there must be some means of deciding which of those valuations is to be the rent.

1367. Yes; but my point is that that decision is come to by a lawyer who has not seen the holding and who is not an expert?—Yes; but he does it by the light of the evidence of experts that he has before him; that is, he has the power of

Mr. *Sexton*—continued.

of weighing evidence, if he has got any capacity for weighing evidence.

1368. The appreciation by the lawyer of the value of other experts, over-rules the opinion of experts upon what they have heard in Court, and what they have seen themselves?—I should hardly like to call it over-ruling; he does not frequently over-rule them; he applies the evidence of other experts to the case, and probably (in my experience) both of them will heartily concur in the conclusion he will come to.

1369. And his judgment is the decisive factor?—Quite so. If either of them object to his decision, and think it is not fair, that man dissents; you frequently find the lay Commissioner dissenting if he thinks the conclusion come to by the chairman and the other lay Commissioner is not a correct one.

1370. I understand the pink report to be, in its form, a unanimous report?—So it is; but if the Commissioners form different conclusions on any of the items comprised in it they write two reports; they have each the right to give in his own report.

1371. The report of the two is the report which prevails?—Yes.

1372. In other words the rent may be fixed by a majority upon the face of the report?—Quite so.

1373. I want to ascertain the real scope of the operation of these Acts: we have heard that rents have been fixed by all the processes, and in all the Courts, and by agreement, upon not quite 300,000 cases (294,000); what do you make to be the total number of holdings, agricultural, or agricultural and pastoral, in Ireland?—I think something over half-a-million is generally supposed to be the number of holdings.

1374. Between 500,000 and 600,000?—Yes.

1375. That leaves us this result, that on 294,000 holdings rents have been fixed, and on a number approximating to a quarter of a-million the rents have not been fixed?—Yes, I suppose it would work out in that way.

1376. Almost half-and-half; or pretty nearly half-and-half?—Yes; according to the number of holdings that would appear to be the case. Of course I must say that a large number of those half-a-million of holdings would be holdings that will not come within the Land Act.

1377. That I understand; do you, from your experience, think it expedient that the scheme of fair rent should be extended as widely as possible?—That comes to a question of policy. Of course, as regards that, my own idea is that the Land Acts have been passed to fix rents of agricultural holdings, and so long as you deal with agricultural holdings it seems to me that the policy should be to bring them within the Act.

1378. I take it the Acts were passed in order to prevent the imposition of excessive rents where the tenant had to live by his industry upon the holding?—Yes.

1379. I mean where the holding was his means of living?—Yes.

1380. Can you assist the Committee to determine what were the main causes why so large a number of holdings remained outside the scope

Mr. *Sexton*—continued.

of the Acts. There would firstly be the legal exclusions, would there not?—Yes.

1381. Now, I find scattered through your very important evidence no fewer, I think, than 47 restrictions and exclusions. If you will follow me; there were four restrictions, I think, in Adams *v.* Dunseath; there are eight restrictions upon the right of the tenants to be exempted from rent for improvements in Section 4 of the Act of 1870; you have given us six restrictions against the presumption that the tenant made the improvements; and you have given us, if I am right, 29 exceptions from the Land Acts; five in which you say there are no tenancies; seven which are held to be future tenancies; 15 classes of present tenancies are excepted; and two cases in which there may be exclusions by agreement?—Yes, that seems correct.

1382. So that upon the comparatively simple provisions of the Statute of 1881, with respect to fair rent, you have had super-imposed, chiefly by judicial decisions, a mass of exclusions and restrictions amounting on the whole to 47 classes of restrictions?—Yes, a large number of those, of course, are specific—they are specifically stated in the Acts, or by inference stated in the Acts.

1383. But is it not possible that the restrictions as to fair rents upon the face of the Acts have been greatly enlarged, and that in some cases what would appear, to the ordinary mind at any rate, to be new sub-heads of restriction have been devised by the judicial interpretations?—Yes, I think it undoubtedly has been so, that is to say, several restrictions that were not referred to at all in the Acts, such as those dealing with tenancies created by tenants for life; of course, those have been brought in altogether by judicial interpretation.

1384. Now most of the Committee are not learned in the law, and it would be a great assistance if you would undertake to give us in a compendious form, say, in the form of a tabular statement, a list of the restrictions and exceptions as to presumptions in regard to improvements, and as to the various classes of exceptions from free sale and from fair rent, showing whether they arose from what I may call the unquestioned operation of the Statute, or whether they were created or disclosed by the judicial interpretation, giving also the case; could you do that?—Yes, I shall do my best, as to whether it will be completely accurate I cannot say.

1385. If you would give us in popular language the broad effect of the decisions, I think we should be greatly advanced?—I shall endeavour to do so.

1386. Now I was upon the scope of the operation of the Acts. Of course a very large number of the quarter of a million holdings excluded are excluded either by reason of the original restrictions of the Statute, or else by reason of those judicial interpretations?—I would not say that of all the holdings that have not come into court, but a great many of them.

1387. It applies to a great many of them?—Yes.

1388. Taking the rulings (and the law as now declared) in regard to limited owners, for instance,

Mr. *Sexton*—continued.

stance, and in regard to sub-lettings, the law which allows hardly any sub-letting to be so trivial as to give the tenant a right of fair rent, and the law which holds that where a statutory term is created during the estate of a limited owner and the estate of a limited owner ceases, the new landlord avoids the statutory term; have not these rulings really undermined the whole scheme of the system of fair rent?—Well, they have, of course, resulted in the exclusion of considerable classes of tenants.

1389. They have resulted in that?—Certainly, those who have sub-lettings very frequently will not serve notices, knowing, of course, that they cannot maintain them.

1390. Now with regard to these cases struck out, withdrawn and dismissed, we have had it from Mr. Commissioner FitzGerald that out of the cases dismissed and out of the cases struck out, dismissed, and withdrawn last year, one-fifth of them were dismissed; that is to say, they were proved to have no application; would that be the proportion, speaking generally, that you would say?—Yes, I think so.

1391. So that out of 60,000 about 12,000 would have been dismissed?—Yes, that at least I would say.

1392. In a case where a case is struck out or withdrawn, that is to say, where the party does not come up at all, or where he comes up and says: "I am not going on," I suppose those are the two cases?—Yes.

1393. Have you any means of knowing whether the tenant, the applicant in that case, may have decided not to go on, for instance, because of a threat of eviction for arrears?—No; as a rule we have no means of knowing. All we know is, when we call the case, that the tenant does not appear; his reason for not appearing, as a rule, is not stated. Of course, with regard to the cases in which ejectment proceedings are pending, where an eviction notice has been served, there it is stated in Court that the notice has been served; and if the six months have not expired we then adjourn the case to see whether a redemption of the interest will take place, so as to enable us to fix a rent. If, on the second calling of the case, when it comes on again the interest has not been redeemed then, of course, the application is dismissed, there being no tenancy.

1394. But as against the suggestion made that the cases struck out or withdrawn are cases in which agreements have been come to out of Court, it is equally open to suggest or to believe that they may not have been heard because, first, of a threat of eviction for arrears; secondly, the fear of an appeal; thirdly, the threat to take away something, such as the right of turbary, mountain grazing, right to seaweed or sand, which was in the discretion of the landlord?—That is quite possible, we have no means though of testing any of those matters.

1395. Might I ask you, as a matter of public policy, whether you think it is a desirable state of things that 300,000 tenants should have a fair rent fixed, and that 250,000 (that is the number) should be subject to rents which, by comparison, are excessive?—Of course, with reference to the

Mr. *Sexton*—continued.

second case you name, a large number of them in my experience have not come into court, because they are getting perhaps temporary abatements. I know a large number of cases on which I have fixed rents for the last year, stayed out of Court for 10 years as they were getting temporary abatements from the landlords.

1396. The temporary abatements being an insecure foundation as compared with the statutory term?—Oh, yes.

1397. In sub-courts what is the practice as to costs?—Well, the rule as regards costs is laid down by Mr. Justice O'Hagan in Adams *v.* Dunseath, and that, as a rule, has been followed ever since, namely, not to give costs in an ordinary value case.

1398. I am speaking of sub-courts?—Yes, I am speaking of sub-courts also. In the last paragraph of Mr. Justice O'Hagan's Judgment in Adams *v.* Dunseath he lays down a rule that has since been followed.

1399. What is the practical effect of it in the ordinary case?—The practical effect of it is that both the landlords and tenants pay their own costs of each application; the tenant pays his costs, the landlord pays his costs.

1400. Who ordinarily serves the originating notice?—The tenant, of course, in the immense majority of cases.

1401. In ninety-nine out of a hundred?—Yes.

1402. And what is the ordinary result of the application of the tenant, is the old rent reduced?—Yes.

1403. Say in ninety-nine cases out of a hundred?—Yes, I should say so.

1404. In most cases is it considerably reduced?—Yes.

1405. But no matter what reduction a tenant may obtain; that is to say, no matter how fully he may have proved his case, he pays his costs?—Yes.

1406. Who usually takes the appeal?—Well, that is rather difficult to say. In some districts, if you take an ordinary appeal list you will find on it both landlord and tenant, whether it is a landlord's appeal or a tenant's appeal. In a very large number of cases you find both. There seems to have got an idea abroad that if one appeals and the other does not it will be taken by the Court of Appeal that the one who does not appeal is satisfied, and that it will prejudice him; and so both will appeal to make sure.

1407. When they both appeal, whatever may be the judgment of the Land Commission, each side pays its own costs by the ordinary rule?—By the ordinary rule. I think there is a special rule with regard to appeals, but at present I cannot give you that.

1408. But by the ordinary rules they do?—Yes, by the ordinary rules they do.

1409. So that if the tenant appeals the landlord is tempted to appeal to this extent, that he knows that the double appeal will, in any event, throw the tenant's costs upon the tenant?—Yes.

1410. Whilst if he left it to the appeal of the tenant, and did not appeal himself, the whole cost might be thrown upon him?—I will just find the rule

Mr. *Sexton*—continued.

rule for you. You will find it on page 585 of Cherry.

1411. I have it here?—"General rules as to costs upon re-hearings in fair rent cases, subject to any special order the court may make in particular cases." First: "When the landlord appeals."

1412. Will you take the last paragraph first: "When the landlord and tenant both appeal"?—"Save in special cases, each party abides his own costs."

1413. So that when a tenant appeals, the landlord knows that if he appeals also, he will throw the costs of the tenant upon the tenant; whilst if he did not appeal, the sole appeal of the tenant might throw all the costs upon him, the landlord?—That may be possible. Apparently, under the rules, no costs can be put on the landlord on a tenant's appeal.

1414. Is not that a direct incitement to the landlords to appeal?—Well, of course I have no personal knowledge as to that.

1415. Well, on the operation of human nature we can judge as to that. Now, what is the usual result of an appeal by the tenant?—Of an appeal by a tenant?

1416. Yes. I may put it in this way: As a rule, what is the usual result; are the rents, as fixed by the sub-courts, confirmed or reduced, or are they in any large proportion of cases increased?—That really varies so much in particular districts and particular circumstances that you can, perhaps, judge better by seeing the percentage of alteration.

1417. Will you give me any general view of the effect of the decisions of the Land Commission upon the decisions of the lower courts?—I see in a table dealing with the entire number of appeals, from the 22nd August 1881, down to the 31st March 1894, that the rents on appeal were increased by decimal 2 per cent.; that is the difference per cent. between Sub-Commission rents and rents fixed after re-hearing. There was an increase of decimal 2 on the whole period.

1418. That does not tell at all the proportion of cases in which rents were confirmed, or reduced, or increased; it only gives an amalgam?—That is all.

1419. Is it a fact that, recently the Land Commission at Cavan have in almost every case raised the rents fixed by the Sub-Commissions?—I can only judge by the report in yesterday's paper, where I see a list of the rents given.

1420. On the question of costs, when the landlord appeals, and the judicial rent is increased, say, when the rent is fixed by you, is increased, even though only by a shilling; that is to say, where the tenant has substantially made good his case; the tenant pays his own costs?—That is the rule.

1421. On the other hand, when the tenant appeals, and the judicial rent is reduced, no matter by how large a sum, the tenant still pays his own costs?—Yes.

1422. I do not know whether we have got from you in any single view the restrictions upon free sale; for instance, is not it in the power of a landlord, when a tenant desires to sell, to

Mr. *Sexton*—continued.

purchase the holding at what is called the true value?—Yes.

1423. Does that apply to Ulster cases?—No, that does not apply to Ulster custom cases; they are governed by the custom.

1424. Have you ever fixed the true value?—Yes, frequently.

1425. The tenant is obliged to sell to the landlord at the true value, is he?—He is; the landlord has the right to pre-empt.

1426. Do you fix the true value as if the tenant was selling in the open market?—Well, we get what evidence we can as to the rate of sale in that particular district, any evidence we can get, for example, as to bids or offers for this particular farm; but of course our true value as laid down by the judges in Adams *v.* Danseath (because they also deal with the question of true value) is not the full competition value, it is a value which is something usually less than that.

1427. How much less than that?—Well, of course you may get evidence of competition value; say that a holding was sold for 300*l.*, the balance of evidence may show that that would be what would be called a fancy value for the holding, and the true value may be fixed perhaps at 250*l.*, that being what is supposed to be the amount that an ordinary farmer, with sensible views as to what he could make out of the holding, would give for it.

1428. Does it come to this: that the tenant of a holding under the Ulster custom desiring to sell can obtain a larger price than you will allow to any other tenant?—Yes; the tenant of an Ulster custom holding has a right of sale which is entirely different from the right of sale that is given by the Land Act of 1881 to a tenant who is not subject to that custom.

1429. The general principle of the Act of 1881, in regard to free sale, was that the tenant was entitled to sell his tenancy for the best price he could obtain, was it not?—Yes.

1430. That general principle is so modified, or I would say destroyed, in practice that in Ulster a tenant under the Ulster custom can undoubtedly get the best price to be obtained. You, in every other case, fix a price which is, I suppose, substantially less than the price which may be obtained under the Ulster custom, or which could be obtained by the other tenant if he was allowed to go into the market?—Yes, it is quite possible that is so. I do not say that it is the rule, but you will find that the judges of the Court of Appeal in Adams *v.* Dunseath have very specifically stated their views on free sale.

1431. I see here, in the case of an application to fix a true value where the tenancy was actually put up by auction and sold for 159*l.*, the Court fixed the true value as between landlord and tenant; which appears to imply that the landlord is not to be treated as an ordinary purchaser, but in some manner advantaged, because he is the landlord, at 105*l.*, not 155*l.*?—Yes.

1432. Do these figures disclose the real value in the open market; the market value?—I should hardly think so. In my opinion the difference would not be so great as that.

1433. When a tenant is having a fair rent

Mr. *Sexton*—continued.

fixed, the landlord can obtain from the Court a specified value, can he not?—Yes.

1434. If the tenant is quitting the holding, the landlord may buy that specified value?—If the tenant, during the statutory term, wishes to sell his interest, the landlord is entitled to the right of pre-emption at that rate.

1435. Is that specified value the true value or the market value?—That is also the true value.

1436. It is the same thing again?—It is the same thing again.

1437. Does that apply to holdings under the Ulster custom?—No, they also are excepted from that.

1438. That is to say, if a tenant under the Ulster custom is having a fair rent fixed, the landlord cannot call upon you to fix any specified value?—No, he cannot.

1439. Is there any reason that you know of—any reason pertaining to the condition of a tenant under the Ulster custom, and the condition of a tenant outside the Ulster custom—that makes it expedient that the landlord in the one case should be able to pre-empt (come into the holding and buy it) at a lower price than could be obtained from an ordinary tenant. Is there any difference between an Ulster farm and another farm in regard to their place in the social scale, income, and so forth?—No, I take it the difference was in the history of the two cases. In Ulster you had a history giving the property to the tenant where the tenants in other parts of Ireland had not that property, and the whole of that property was acknowledged or legalised by the Act of 1870; and the Act of 1881, I suppose, considered that to give that right of fixing a true value to the landlord in the case of an Ulster custom holding, would be to cut down the custom.

1440. Yes; so that it is not due to any present consideration of equity?—No; it is historical, mainly.

1441. It is due to historical causes, mainly that one tenant is placed under that disadvantage with regard to another?—The Ulster custom tenant had a property in the soil which, until the Act of 1881, was not given in law to the other tenant.

1442. But the two men, having each a holding, and there being a general principle of law that the tenant is to sell for the best price he can get, owing to an historical cause that the two tenants personally know nothing about, one of them may sell his holding at a higher price than the Court will allow the other to get?—The question is whether you should bring the other tenant up to the level of the Ulster custom tenant; but the Legislature did not apparently want to cut down the property of the Ulster tenant to the level of the other people, and it has excluded him from the provisions that govern the other tenant.

1443. Public authority allows the one man to sell freely and to get the most he can?—Yes, as a rule.

1444. Then there is the other, to whom the public authority says, "You must sell to this particular man, and you must sell to him at a price that is fixed, although that price is lower than the price you could get in the market"?—Yes, but it must be remembered that in many Ulster custom cases there are estate rules which limit the amount that the tenant can sell his tenant right for; so that he often is hit in that way; an estate rule will prevent him selling for more than a certain sum.

Mr. *Sexton*—continued.

1445. Is that certain sum, in your experience, a higher sum than the true value, or the specified value?—Not always; there are cases in which the limit would be 10 years' purchase, and perhaps our true value might be even more than that.

1446. Usually the fixing of the true value, or the specified value, places the tenant at a disadvantage as regards the man who has that right?—It limits the possibility of his getting the bigger price.

1447. Do the Ulster customs prevail throughout Ulster?—Yes, but more especially in Antrim, Down, Armagh, Londonderry, and Tyrone. They are not so strong in Monaghan, although they exist there, and they get weaker as you get down into Cavan.

1448. Do you find it prevails more in the plantation districts than in the others?—The counties I mention, are the ones in which it prevails most extensively.

1449. The plantation counties; in Ulster, where the custom does not prevail, the tenant is like a tenant outside Ulster?—That is so; he is like a tenant outside Ulster.

1450. Would you venture any opinion as to the law that governs the sale subject to any custom?—That is subject to any "custom"?

1451. Usages; are there any?—Yes.

1452. Would you say what proportion?—I would say that the great majority of the holdings in these counties I have named, are subject to usages or "custom" which would come under the denomination of "Ulster custom"; but when you get out of these counties, say into the County of Cavan, there are a very large number of cases where apparently the custom is very weak, or does not prevail.

1453. Outside Ulster, have you found any usage analogous to the Ulster custom prevailing?—There have been cases in my own experience; and I know it has been held in cases like those on Lord Portsmouth's estate, I think in Wexford; a custom analogous to the Ulster custom was proved to exist there.

1454. They are rather exceptions, are they not?—They have not been proved in many cases.

1455. So far as proof is concerned, the tenantry of Ireland outside Ulster have not the protection in regard to free sale and other matters that the Ulster custom tenant has?—Yes, that is so.

1456. I think you said the presumption is, under the Ulster custom that all the improvements are made by the tenant?—Yes.

1457. And otherwise there are numerous cases which you gave us in which the presumption is not allowed?—In cases not subject to the custom.

1458. Do you discover anything in the nature of the case as apart from the Statute, to suggest the

Mr. *Sexton*—continued.

the propriety of that distinction?—Not unless it be an historical one too. In the Ulster custom case of tenant right, in the case of improvements, it has been always acknowledged that the improvements on those holdings, unless the contrary is shown, are the property of the tenant, and they are sold by him as part of his tenant right.

1459. But as a matter of fact are the improvements in Ireland made more frequently (or invariably) by a tenant under the Ulster custom than by a tenant who is not under it; as a matter of fact?—Well, I really do not know that I could draw any distinction. I know, of course, that taking it for all in all of the improvements that are proved in court (if I am to take improvements proved in court), the majority of them are proved to have been made by the tenants whether in Ulster or out of Ulster, but I really do not know that I could draw any line of distinction between the two classes of tenants.

1460. Is not there a provision of the law by which when the landlord can prove that he has made, and substantially maintained, permanent improvements he can prevent a fair rent being fixed at all?—Yes, that is so.

1461. Has a landlord ever succeeded on that ground in preventing a fair rent being fixed?—I do not know of any case. I believe there have been cases in Kerry, but where the failure comes in is in the attempt to prove the maintaining; I know it has been argued before me on some occasions. It has been often proved, that the improvements were "made" by the landlord, but when it comes to the question of "maintaining" them the proof breaks down.

1462. That some improvements have been made by the landlord?—Yes.

1463. Now, taking your experience from the evidence given before you, when the presumption that the improvements were made by the tenant is denied, and you start upon the withholding of that presumption, are you not in conflict generally with the facts as proved in evidence? Perhaps I may put it better in this way: If the presumption was in every case that the tenant had made the improvements, would it not, as a matter of almost invariable experience, accord with the fact as proved in evidence?—Well, yes; as I said before, undoubtedly when it comes to a matter of proof as to whether the landlord or the tenant has made the improvements, in the majority of cases we undoubtedly find it is the tenant who has made them.

1464. Do you see any reason why, the tenants being the less educated class, the class with no records, the presumption should not follow the fact as a general rule?—It is a question of policy, and as to that of course you can draw your own conclusion.

1465. The effect of refusing the presumption is that the tenant has not only to prove that the improvements actually exist, but also that he, or his predecessor in title, made them?—Yes, and of course the way that rule holds of presumption out of Ulster is simply this: If the tenant claims certain improvements found to exist on the holding, such as a building, if the landlord does not prove it, or does not raise any question as to pre-

Mr. *Sexton*—continued.

sumption, it is given to the tenant as a matter of course; but if the landlord raises the question, and proves: "This holding was held under a lease," "this holding is valued at over a hundred pounds a year," "this improvement was there before 1850," there being these exceptions to the presumption, then the onus is shifted, and the tenant has to prove the actual making of the improvement.

1466. A denial of the presumption makes it necessary for him to prove not only that it is there, which of course it is necessary to prove, but that it was made by him or his predecessor?—Yes.

1467. In the case of the predecessor having made it, the tenant, an ignorant man without records, coming to the table, often fails to legally prove that he is entitled to an improvement which was actually made by his predecessor in title, does he not?—Of course, in law we have no way of knowing.

1468. What is your opinion?—Well, if you wish to follow out the general course of evidence that the improvements are most frequently made by the tenant, I think you might assume that.

1469. If the presumption was that the tenant had made them, the landlord, as a general rule, being a person of education with a staff and with records, would have no difficulty compared with that of the tenant in proving that the improvements were his, would he?—On many of the big estates I have found that the agents have records. I know that on large estates in Cavan or Monaghan the agents almost invariably have office books, in which they very carefully enter the particulars of improvements, or where they have allowed slates or timber or any other allowances to the tenant.

1470. But the presumption now works against persons least able to prove, even though the fact were that the improvements belonged to them. If the presumption were the other way, the landlords would be in a much better position comparatively between the two classes than the tenants are to prove them?—In the case of big estates I would say so; in the case of small estates I do not know that it would be so much so.

1471. Is it correct to say that the statute, in directing you to fix a fair rent, laid down no principle, but left the principle of the fair rent to your discretion?—Yes, that is so.

1472. How do you define a fair rent?—We generally consider a fair rent one that a reasonable man would himself give for the holding, having regard to all the circumstances of the case, holding and district; that is, that it is a matter not to be got at by a careful calculation of percentages or figures; it is really to be fixed, and properly fixed, by the absolute experience of the man who goes to fix it.

1473. That is to say, you fix the rent at such a figure that you think a solvent man, intending to pay his rent and live by the holding, would give?—Yes.

1474. When the statute directs you to have regard to the interest of the tenant and the landlord, does it add anything, in your judgment, to the direction to fix a fair rent. You cannot fix a fair rent without having regard to these

Mr. *Sexton*—continued.

interests, can you?—You must undoubtedly have regard to their respective interests if you are to fix a fair rent.

1475. What do you understand by "the circumstances of the case, holding, and district"?—Well, all the different matters that go to affect the productive capacity of that holding; for example, you may have with the holding a good or a bad water supply; you may have with the holding a good or a bad aspect; it may have a north aspect or a southern aspect; it may be land that has got certain rights attached to it that are beneficial; it may be near a good market town; it may be situated in a very remote position with bad roads leading from it to the markets, and no railway facilities. You have an immense variety of circumstances to take into account.

1476. But it all has relation to the value to be obtained out of the holding by the tenant, has it not?—Yes, the productive power of the holding to the man who works it.

1477. A fair rent, you would say, must not be excessive, and you would consider it an element of a fair rent that it must leave the tenant enough to subsist upon?—A fair rent is not a competition rent; a competition rent is a rent that can be got for a holding if in the landlord's hands, he having all the improvements in his own hands, and capable of letting it to any passer-by who may come and take it at a competition figure.

1478. Is your system of valuation, which is very elaborate, and has regard to many classes of land, and so forth, all founded upon the principle that, after the cost of production is deducted from the probable cost of the produce, and the rent is paid, the tenant has a means of subsistence?—Well, it gives the tenant an interest in the holding which must be represented by some figure less than the competition figure. We cannot fix a rent on the mere question of whether it will afford a subsistence, because, on a large number of the holdings, if we adopted that plan, we would fix no rent.

1479. Then I introduce this principle: Where a tenant cannot live by the holding (there are such cases), do you in that case act upon the proportion between the rent and the surplus, after payment of the cost of production?—Yes, as a rule that is so.

1480. What proportion do you generally fix?—That, of course, is a proportion that to a certain extent varies according to the circumstances of the case, and the principles of the particular valuer; you will very seldom find two valuers agreeing on the same proportion; some may think that a higher proportion should be given than others.

1481. Can you give any general view, any approximation?—I have found that some of the best valuers will say that where a competition rent (we will suppose) would be 35*s.* an acre, perhaps the fair rent of that holding might be 20*s.* an acre.

1482. What proportion as a rule, or generally, would that 20*s.* an acre bear to the surplus per acre on the farm after the cost of production had been paid?—Of course, the competition rent is supposed to represent the full amount that can be made out of the land, having regard to the fact that the tenant has no interest in the holding; he has no interest in it, and he pays the full money sum that he can make, merely paying himself the interest on capital, the various wages, labour, and other items; but then when you come to the fair rent, you have to take an additional element into consideration.

Mr. *Sexton*—continued.

1483. Even in the case of a competition rent, it must bear some proportion to what the tenant gets out of the holding?—Oh, yes; but as I say, we do not fix that, as a rule, by the calculation in each case as to the actual money amount that you will make out of a particular acre of land by sowing oats in it, or by planting potatoes in it; it is the amount that the valuer, having regard to his experience, will think can be made out of it.

1484. Have you in your minds any proportion or variation, or oscillation between two proportions when you are fixing a fair rent as between the fair rent and what you consider to be the amount that the tenant puts into his pocket after having sold crop and stock, and paid the cost of production?—In this way. The valuer who values the holding will say to himself: "If I were to take this holding as my own farm, and to give a rent for it, I think, after giving me a fair proportion of the return from the land (what I consider as a farmer to be a fair proportion of the return), I would pay for it, so many shillings an acre." That is the way the valuer arrives at it; he will say: "I can pay 20*s.* an acre for this holding, and give myself what I think would be a fair proportion of the money to be made out of it."

1485. Where the holding is of a sufficient size, and he devotes all his labour to it, would you say that it would be an element in the consideration of a fair rent that it should leave him sufficient to pay for food, and fire, and clothing, and maintenance?—Of course, that is "his interest."

1486. Now I am going to ask you a few questions before I finish about "improvements." I will take the definition of "improvements" contained in the Act of 1870, as applied to the Act of 1881. Now this is the definition of an improvement: "Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also (2) tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding." You observe in that, it is an improvement in the letting value?—Yes.

1487. Or, in other words, unexhausted benefit; that is the essential matter?—Yes.

1488. The 9th sub-section of the 8th section of the Act of 1881 says this: "No rent" (there is no reference to any allowance), "shall be allowed or made payable to any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title." Now I put aside any questions of inquisition into the restrictions of the statute or Act (the position of the interpretation) I put aside at once any improvement upon the holding for which the tenant has been "paid,"

Mr. *Sexton*—continued.

"paid, or otherwise compensated," does it not appear here on the face of the statute that where you find that the tenant has not been "paid or otherwise compensated," there is no rent to be charged in respect of that improvement?—Yes; that would be the reading of it. Do you mean that that word "improvement" there should have the definition given in the Act of 1870?

1489. I do?—In that case you could only read it (that is, if you are to follow the reading given of it by the judges in Adams *v.* Dunseath) according to their definition of the word "improvements," supposing it had never gone beyond the definition of the word "improvements." You can only apparently apply it to the improvement works and the actual money spent in making the improvement works.

1490. Suppose the Act of 1881 had stood alone?—Then you are in a different position.

1491. With the definition contained in the Act of 1870, would you then hold yourself entitled to charge any rent whatever to the tenant in respect of any improvements for which you did not find he was "paid or otherwise compensated"?—If you give the word "improvements" the meaning given to it in the 70th section of the Act of 1870, you then must read into the 9th sub-section of the 8th section of the Act of 1881, in the place of the word "improvements," the definition that you now refer to.

1492. Yes, and read in the definition?—That is, "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvement works."

1493. Yes; "No rent"?—"In respect of improvement works."

1494. Now will you tell me, having regard to the language of the definition, and having regard to the positive and absolute language of Subsection 9 of Section 8, how is this question of an allowance in respect of improvements for which a tenant has not been "paid or otherwise compensated," introduced?—It was introduced entirely owing to the judicial reading of it given by the judges in Adams *v.* Dunseath, that is, they held in that case that the right to exemption from rent on improvements was synonymous with the right to obtain compensation for the same improvements on quitting the holding.

1495. Of course, the definition of an improvement in the Act of 1870 was adopted in the Act of 1881, but were not the circumstances under which improvements were dealt with in the Act of 1870 different from those in which they are dealt with in the improvements and fair rent section of the Act of 1881?—Undoubtedly.

1496. I mean this: the object of the Act of 1870 was to provide that, when a tenant quitted a holding, the landlord should pay the tenant in respect of certain improvements made by the tenant?—Yes, quite so.

1497. The object of the Act of 1881 in the clauses now under review was to provide for the tenant, continuing to be a tenant—not quitting his holding—but where he had himself made improvements he should pay no rent upon them during the continuance of his tenancy?—Quite so.

Mr. *Sexton*—continued.

1498. How do you make it appear that the mere adoption in that Act of 1881 of the definition of an improvement contained in the Act of 1870 applied, by consequence, to all the conditions governing compensation for improving on quitting a tenancy under the Act of 1870 to the totally different circumstances dealt with by the Act of 1881, namely, a case of payment of rent upon improvements during the continuance of the tenancy?—I would not like to have to show the identity in principle; that is done for me by the Court of Appeal in Adams *v.* Dunseath.

1499. Now I want, before I finish, to try and get out the working out of these allowances. Where you deal with buildings, your plan is to value the holdings without the buildings, is it not?—Yes.

1500. Why do you treat the buildings distinct from all other improvements?—We value the soil as it exists, that is, the valuer goes out and examines the soil of the holding per acre; he finds by his examination of the soil that, in his judgment, having regard to the subsoil, and the nature of it, it is worth so much; and that value will be in the soil whether there are any buildings connected with the holding or not; that is, the buildings are a separate thing.

1501. If you find that the buildings or any of them have been put up by the landlord, you add the full letting value of them to the rent of the soil?—That is the principle, as a rule.

1502. The fair letting value?—Yes, the fair letting value.

1503. You add the whole of the fair letting value of the buildings put up by the landlord to the rent of the soil?—Yes.

1504. But if you find that the tenant has put up the buildings, or any of them, you ignore them; you fix the rent as if there were no buildings, so far as the tenant is concerned?—Quite so.

1505. The reason of that separate treatment of bnildings is, as I understand you, that the buildings do not affect the inherent capacity of the soil?—Quite so.

1506. Therefore you allow the tenant all the benefit of his buildings?—Yes.

1507. Take fences, or roads; fences or roads, do not affect the inherent capacity of the soil?—No.

1508. Do you, when you find that the tenant has himself provided fences or roads, relieve him from rent in respect of the whole of the letting value, added to the holding, by the value of the fences and the roads?—In Ulster cases you do, because there the presumption is that the fences and roads were made by the tenant, but if the presumption does not apply, then, of course, he has to prove his fences and roads the same as he must prove any other class of improvements.

1509. I am not upon the question of proof—I am upon the question of your dealing with them after they are proved. Do you, or do you not, give to the tenant a relief by way of exemption in his rent in respect of the whole of the letting value added to the holding by fences or roads put up by the tenant?—If the method of valuation adopted is the one that I now mention, and the one I find carried out by some of the best

Mr. *Sexton*—continued.

and most experienced valuers (namely, the value of the soil as it is found to exist), then, undoubtedly, the question of fences and roads must be treated separately; if they are the property of the tenant they are ignored; if they are the property of the landlord an addition is made to the valuation put on the soil.

1510. On the question of the inherent capacity or unearned increment in improvements, the tenant is, in your judgment, entitled to have the whole of the value in respect to the fences and roads ignored, as he is in regard to buildings?—Quite so.

1511. Take a case where the inherent capacity is affected; take drains, or reclamations, could you make what you call an allowance, when you find the tenant has made these improvements?—Yes.

1512. But what the Act says is, that "no rent shall be allowed or made payable in respect of improvements," the words are very general there, "in respect of improvements made by the tenant"?—Yes.

1513. Now let us put it into figures: suppose you find that a tenant has expended any capital or any labour, it does not matter which, I suppose?—No.

1514. Suppose you find that a tenant has expended any capital, or any labour, to the value of 1,000*l.* upon an improvement which does affect the inherent capacity of the soil or reclamation, or an elaborate system of drains, you find how much that expenditure has added to the letting value of the holding?—Yes.

1515. Suppose the 1,000*l.* were expended with ordinary skill and aptness, to hold it, what do you say would be the fair addition to the letting value?—Expended in reclamation or in drainage?

1516. Yes?—A thousand pounds expended in reclamation might add a capital value of 10*l.* or 15*l.* an acre. You may take it, of course, that some reclamation would add an enormous amount; exceptional reclamation may add a large amount to the value of the holding; in other cases it will add very little; it may add, say, 10*s.* a year on an acre of land, or it may add a 1*l.* or 30*s.* a year to an acre of land.

1517. In the case of an apt and skilful reclamation or other improvement, how do you apportion the increased letting value due to that improvement, if you do apportion it, between the tenant and the landlord?—You first find out what it would cost the landlord himself to have put the land into the condition that it is put into by the improvement, that is, what the actual cost of making the improvement would be; it may be 10*l.* an acre, it may be 5*l.* an acre; that is what is to be given to the tenant. He gets the actual money cost per acre, but the making of that improvement, of course, conceivably may have increased the letting value of the acre of land by more than the return representing the actual cost of making it. That is, the actual cost of making it may be 5*l.* We will take now, as an instance, to put it clearer, the case of an acre of land which in its present condition is worth a shilling an acre unreclaimed; you may spend on reclaiming that, say, 5*l.* in money, that may increase the letting value of the acre to 10*s.* a year.

Mr. *Sexton*—continued.

1518. From one shilling?—Yes, from one shilling. I am now supposing a case. In that case 5*l.* represented the amount of the cost of the work done, allowing there, we will suppose, 5 per cent. upon it.

1519. You said 10*l.*, I think?—Five pounds in that case. Five shillings a year will represent the amount that it cost the tenant to make that improvement; you will allow him that.

1520. Then it will take 20 years to pay him back the 5*l.*?—The amount of interest must depend on the length of time you calculate it will take to repay him, but I am supposing, for example, we pay 5 per cent. upon the amount; that 5 per cent. is allowed to the tenant; then, of course, there is another 5*s.* I suppose in this case that 10*s.* is the present letting value of the acre; 5*s.* of that goes to the tenant as against his improvement work; there is another 5*s.* left. One shilling of that will be represented by the original value of the acre before the improvement was commenced; then there is the 4*s.* which represents the increased letting value which has accrued from the making of the improvement over and above the cost of the improvement work; that 4*s.* is under the present reading of the law the property of the landlord and goes to the landlord.

1521. Suppose the landlord brought in a stranger as a contractor, and that the contractor did the same work that the tenant has done; would not the contractor get even more for it than you allow to the tenant; would not he get the money he had expended, and also something for his skill?—Of course the money that is expended is the cost of labour, and we do not add anything on for what you may call skill in the form of engineering skill. We assume that in an ordinary reclamation there is no special skill required, but that it is a part of the ordinary work of a farmer.

1522. He may be employing labour?—Yes.

1523. And employing his own labour?—Yes.

1524. My point is, if a stranger were brought in by the landlord, a contractor, a person having no interest in the soil and no right there; and he did the very work the tenant has done, he would get more than you allow the tenant, because he would get something for the expenditure and labour, and also a percentage for skill?—No, we calculate that the cost to the landlord in the case I have named would be the 5*l.* to buy the acre of land in its present state. That 5*l.* is simply the amount the landlord would pay the contractor to do the work, and that would include the ordinary profits that a contractor should expect.

1525. Is not a tenant rather worse off than a contractor would be?—I do not know that he is, not if we give the proper allowance; of course, it all depends upon whether you give the proper allowance.

1526. What do you do more than give him back the actual amount expended without any profit?—We give him back what he is out of pocket, what it would have cost the landlord, as I say, to have got that work done, paying for it out of his own pocket.

1527. Therefore,

Mr. *Sexton*—continued.

1527. Therefore, although the statute says the tenant is to pay no rent in respect of any improvements made by himself, you treat the tenant as if he was simply a labourer doing the work at wages from the landlord?—Yes; so far as we justly may, we take into account what it would have cost the landlord to have done the work, calling in an outside contractor.

1528. You treat him as if, instead of being a tenant and part owner having an interest in the soil, he was a stranger who did the work as a servant of the landlord; and all the profit resulting from aptness and any profit on his labour and skill goes to the landlord?—Yes; that is to say, the surplus over and above the sum we allow for doing the work, which accrues from the work, goes to the landlord.

1529. Why do you divorce the tenant from the benefit of any result accruing from his skill and the advantage which is inherent to the soil; is not the tenant part owner?—Yes, now he is.

1530. Is not his share of the holding, in Ulster especially, more valuable than the share of the landlord?—Yes, it is often so.

1531. Why should not he have a share in the profit due to the application of his money to the inherent capacity of the soil of which he is part owner?—Well, of course, as I say, that is a matter which must be settled on the reading given to Adams *v.* Dunseath.

Mr. *Dillon.*

1532. You said that you alone decided, at least I understood you to answer in that way, what improvements were to be allowed to tenants?—I said, I think, that when the question arises we agree as to what improvements are allowed by law. I decide the legal question as to the ownership of these improvements, whether they are to be credited to the tenant or credited to the landlord; the lay Commissioners seldom themselves interfere in that decision.

1533. Then that is decided before the lay Commissioners go on to the holding?—Yes, that is decided on the evidence we have got in court, and on the arguments of the respective parties.

1534. But is that decision concluded before the lay Commissioners visit the holding?—In practice it works out in this way: there are so many perches of drains and so many acres of reclamations claimed and proved in court, and it is then and there decided (if the landlord raises no question as to whether these drains or reclamations were captured, as we say, by the lease or by any other means which will transfer the interest in them), as to whether they are to be taken into account on fixing the rent in favour of the landlord or in favour of the tenant.

1535. That does not quite settle the doubt that is in my mind. We were told by Mr. Commissioner Fitzgerald that, in the original application, the tenant, if he is valued above 10*l.* per annum, has to endorse on the back of his application to get a fair rent fixed particulars of the improvements for which he claims exemption?—Yes.

1536. I understand he is not able to raise any

Mr. *Dillon*—continued.

other improvements in court, except those endorsed?—Quite so.

1537. Then what I want to know is this: when the lay Commissioners go out to the farm have they got a decision before them as to what improvements they are to inquire into; is it settled before they visit the farm what improvements are to be allowed to the tenant and what are not?—Yes; the rule that I have mentioned requires the tenant to prove in court the improvements for which he is to claim credit; that has to be decided in the first instance.

1538. In the first instance?—Yes.

1539. Therefore, when they visit the farm they know what improvements he has a right to claim?—They do.

1540. I remember on that file that was produced, in that particular case, there were endorsed the particulars of a number of buildings alleged to have been put up by a tenant within a very recent period, and for which he claimed, and, as well as I remember (I have not got a copy of the file), all these were erased and he was allowed for nothing but 50 perches of drains; how do you suppose those vanished?—That may have been a case where there was some covenant or clause in the lease that may have captured the houses.

1541. I will not refer to that case further; the point I want to come to is this, the method of proof. The question as to what improvements are to be exempted from rent is decided by you in court before the holding is examined?—Yes.

1542. The tenant can get credit for no improvements except what he proves in court?—Quite so.

1543. What proof is accepted?—Well, I may say we take the legal evidence that is allowed in any court of law. Of course we are bound by the ordinary rules of evidence, and we cannot admit any evidence except that.

1544. I would like you to explain a little; you explained it to some extent before; does it mean the tenant has to swear of his own direct knowledge that this improvement was made by himself or his father, or else that he must prove it by documentary knowledge?—Or he may produce a witness who has seen it made by his predecessor.

1545. But that is the only kind of evidence he can produce, is it not?—I would hardly like to say that includes all possible evidence; any evidence that will be accepted in any ordinary court of law we also accept.

1546. Have you had experience in small holdings in the west of Ireland?—I have had a good deal of experience in Leitrim and Roscommon.

1547. What is your view of the possibility of small farmers who hold reclaimed lands being able to prove the value of their reclamations?—Of course, if the reclamation has been recently made, as a rule, they are able to prove it by their own evidence; in some cases they are able to produce the evidence of neighbours, who have seen it done, but if it happens to be the case of a tenant who has recently succeeded, and who

is

Mr. *Dillon*—continued.

is not able to get any neighbour who has seen the work done to give evidence, then, of course, they are shut out from the proof and from the allowance.

1548. Would you say from your experience that that happens in a great many cases?—It happens in a great number of cases where the reclamation has been done, we will say, before 1850, and, of course, those are the class of cases in which the presumption is excluded.

1549. The presumption is excluded there?—Yes.

1550. That is, practically speaking, in a great number of cases in which reclamation has been done before 1850 the tenant is powerless?—Yes, that is so.

1551. The presumption is against him, and he must prove his improvement by legal evidence? Yes.

1552. You said the first thing to be done is to investigate the holding when the case comes into court?—Yes.

1553. I suppose you have power to compel agents and landlords to produce all documents? —Yes; if the tenant, for example, wishes to get any evidence out of the landlord's estate office or books he can serve a notice to produce, as in any other proceedings.

1554. Can you do that on your own initiative? —Not unless the notice to produce is served; these documents are very seldom in court, and unless you adjourn the court you are not able to get them.

1555. Now, I just want to ask you one or two questions about town parks. You stated, I think, that any collection of houses now is regarded as a town?—I stated that that is apparently the reading which has been given to the decision in Caledon *v.* Archer. Any collection of houses with a demand for accommodation land may be a town. The Lord Chancellor in that case carefully avoids the use of the word "town;" he says "place."

1556. Is that an expression used in the Act? —No.

1557. What is the expression used in the Act? —"A city or town."

1558. Where does the word "place" come into the judgment? — I think I have the judgment here; I shall read it for you if you wish.

1559. Just that passage where the word "place" is used. What I want to know is, how the word "place" came into the judgment if it is not in the Act, because a solitary public-house might be a "place"?—The Report of Archer *v.* Caledon is in the 28th "Irish Law Times" Report, page 4.

Chairman.

1560. What is the date of this?—The date is December 1893; that is, last December. The Lord Chancellor says, "The judgment of Mr. Justice Bewley assumes that this holding has every incident of a town park except one;" and then he goes on to mention the three incidents attached to a holding to constitute it a town park. "First, occupation by a person living in the place" (he uses the word "place" there). "I will not call it a town" (he says). "Second, increased value by reason of its being near that place; third, that the place is a town; that is, it must have the general characteristics answering to what one understands by that term." Then he goes on to say: "No doubt we must have something that would answer the description 'town,' but I do not see any reason why Caledon, with its population of 700 people, should not answer the description of 'town' for the purposes of this question, and within the meaning of Section 58 of the Act of 1881. When we have people requiring accommodation land, people using that accommodation land, people living in the place for which that accommodation land was necessary, and paying 50 per cent. more for their land on account of its being near that place, we have all the essentials of the definition of a town park."

Chairman—continued.

Mr. *Dillon.*

1561. Have any of the Judges (the Lord Chancellor, or any of the Appeal Judges, or the Chief Commissioners) given a definition of what they understand by the term "town"?—Apparently they have not gone nearer to it than that allusion.

1562. Oh, yes, they have gone beyond that?—You mean with regard to population.

1563. They have gone beyond that, because they have included Loughlinn in Mayo, which has only 150?—Loughlinn was dismissed; that was a residential question.

1564. Can you refer us to the definition of "accommodation land;" what is the meaning of the term "accommodation land"?—"Accommodation land" is partially defined by the section. It has been decided, as laid down by Baron Fitzgerald in the case of Christy *v.* Gordon, that "lands near a town necessarily bear an increased value as accommodation land, if the town is of such a size that there are persons in it who require such land, and the lands are sufficiently convenient for the purpose." Practically, accommodation land is any land round a town among the inhabitants *qua* inhabitants for which there is a demand.

1565. That seems to me to be rather a vague definition; that it is accommodation land if the town be of such a size that people living in it would require accommodation land? — Lord Justice FitzGibbon, in the case of Killeen *v.* Lambert, a Mayo case, one of the cases in which that question was gone into, says, "The question is not one of rent but of value, though the payment of an increased rent by a townsman is almost conclusive proof that the land bears an increased value to him; and whether he agists market cattle, feeds his own cows, supplies his house with country produce, utilises the manure of his horses, or in any other way works the land and his residence more or less as one establishment, he will generally obtain an increased return from his 'town parks' as accommodation land over and above the return to be got from an ordinary farm."

1566. The definition would appear to be there that if he works it as one establishment, as a town establishment, it is accommodation land?—Quite so.

1567. Has it ever come in your province to estimate

Mr. *Dillon*—continued.

estimate or consider what the effect of a certain fall in prices would be upon the land?—Of course, in valuing land you must have regard to the level of prices for some years back; you must look practically at the history of prices during recent years, and so far as you can estimate the course of prices in the future.

1568. Have you ever estimated what the effect of an all-round fall of, say, 10 per cent. on the chief products of the farm would be on land?—No, I cannot say I have; that is not the way in which we would deal with it. We deal with the valuation of the land, as I tried to explain in answer to Mr. Sexton, on the principle of what a man who has experience of agriculture, and who keeps his attention and mind on the course of prices at present and in years past, thinks he would reasonably give for that farm and land, and in that way, if there has been a fall in prices of 10 per cent. or 20 per cent. in any particular commodity, of course he must take that into account in estimating what he thinks now he, as a reasonable man, would give for that farm.

1569. But in coming to the decision (which appears to be a decision based on rather complicated considerations) of that character, surely, in the process of arriving at that judgment, you must have made out in your mind (at least I should suppose so) what the effect of the 10 per cent. on the chief products of the district would be on a fair rent?—Of course he has done that in the process I have named.

1570. I am speaking of yourself, not of him. You are trying to put yourself in the position of an intelligent farmer who is considering what he will give. In order to do that you must arrive at it by some process of calculation?—Of course, as I explained to Mr. Sexton, in answer to questions he put to me, I arrive at it not by my own valuation. I do not go out and value the land; I have the report of the two lay Commissioners who have gone out and adopted that consideration, and with the evidence given to me by the expert valuers who have been put up in Court.

1571. Then your opinion is that that would be more a question for the lay Commissioners?—Quite so.

Mr. *M'Cartan.*

1572. I understood that on the back of the notice over 10*l.* the tenant was obliged to put the schedule of improvements, and the particulars and the dates?—Yes.

1573. And if he fails in doing that, it is open for you to reject the notice, or not to take into consideration the improvements?—We reject any claim for improvements.

1574. I understood you to say that in some cases the Commissioners, when they went out to the farm, saw there were improvements made by the tenants, but not mentioned in the notice?—Yes.

1575. And that they were debarred from taking those into consideration in fixing a fair rent?—Yes.

1576. You also said they could make an application to have the case adjourned, and serve a fresh notice?—Yes.

Mr. *M'Cartan*—continued.

1577. But could they do that at that stage?—No, not at that stage.

1578. So that it would be too late?—It would. I may say this, that if, in an exceptional case, very large improvements appeared, and an application were made to us before we gave judgment, to enable that notice to be served, it is very probable that we would give an adjournment to enable it to be done; but of course that would be at the risk of costs.

1579. You have very large experience now through Ulster, have you not?—I have.

1580. Is the result of your experience that it is most difficult for the tenants to be in any degree accurate in the particulars of improvements in their notice?—Well, my experience with regard to that is this, that, as a rule, when the tenant serves his notice he comes in to his solicitor, and the solicitor, who knows the law and the requirements, asks him, "What improvements now do you mean to rely upon?" and he at that stage has not measured the improvements, and has not surveyed the place; the result of it is that he makes, to a certain extent, a kind of guess at what he means to claim, and we very frequently find that what he actually has claimed is entirely different from what he proceeds to prove when he comes into court.

1581. Now just upon that point; do you consider that it is a great advantage to the tenant to consult a lawyer in these cases?—Undoubtedly, in a case where there is any complication at all with regard to the matters which a tenant relies upon as affecting his rent, we find, over and over, that tenants, from ignorance or from employing "hillside men" as lawyers, get into difficulties.

1582. In its Parliamentary sense, you mean?—In a Parliamentary sense; he gets a schedule of improvements put on which is entirely at variance with the correct state of facts.

1583. Sometimes, I believe, the notice is not even signed?—Very frequently.

1584. Have you had to dismiss cases very frequently?—Yes; very often cases have been dismissed owing to wrong ideas as to how the application should be made.

1585. Are there times or are there cases in which you have to charge rent to the tenant for some of the improvements mentioned on his notice, and which have been proved up to the hilt as having been made by the tenant; take, for example, a case in which the holding is not suitable, or the improvements too good for the holding?—That is a principle which I have, I may say, never practically applied, but perhaps I would be obliged to do it now if the question came on again, owing to a decision which has been given in a case of Robb, I think, and the Marquess of Downshire, and which is not reported; but that decision turns on the final words of the first part of the definition clause in the Act of 1870, namely the words, "And is suitable to such holding." It has been held in that decision that where the improvements are not suitable to the holding, that is where they

Mr. *M'Cartan*—continued.

are too good for the holding, they are not to be credited to the tenant.

1586. Even though they add to the letting value?—Quite so.

1587. I think we can best illustrate this point by dealing with the case of Robb, it affects a large number of cases. In this case, I believe, the old rent was 20*l.* 16*s.*?—Of course, I do not know the figures.

1588. I thought you heard the case?—No, I did not hear the case, it was before Mr. Justice Bewley.

1589. You have not the order here in that case, have you?—We will get the file.

Mr. *T. M. Healy.*

1590. It was decided in March 1892, was it not?—Yes. We will get the file in that case.

Mr. *M'Cartan.*

1591. With reference to the Ulster custom, it is your experience, is it not, that it varies very much, or rather the Ulster usages vary very much?—Yes, they do vary in this sense, that in many districts they have not got the same potency that they have in others; they are limited in many ways.

1592. But I understand that originally the Ulster custom prevailed all over Ulster?—Yes.

1593. And it was such as you define it to be?—Yes; the estate rules have limited it.

1594. In the first section of the Act of 1870, I believe a most unfortunate change was made in the word "usage;" it was pluralised and made "usages"?—Yes, that is so.

1595. You have not only to prove now "usages" in Ulster on the particular estate, but with regard to a particular holding?—Quite so.

1596. In some cases the usage was on sale to allow the tenant to get 10*l.* an acre?—Yes.

1597. And in others the usage was to allow him to get nothing at all?—Well, 10*l.* the acre is generally regarded as cutting down the custom. There are several estates in Tyrone and in Armagh where the 10*l.* an acre rule obtains, but that is generally looked upon as a limitation.

1598. I know that was proved on the Kilmorey Estate in the county of Down with which you are acquainted?—Yes.

1599. There was also a further limitation in that very case of the Kilmorey Estate, I do not know whether you know it or not, where the tenant had no issue, and it was maintained by the landlord that where the tenant had no issue then the custom was that the estate of the tenant should go to the landlord?—Yes, I have heard that raised. I think it was on a case near Kilkeel.

1600. Near Kilkeel; I understand that the Land Commission has not been very consistent from the start in its decisions, or the judges?—I do not know that the Land Commission are any worse than any other court.

1601. The judges of appeal, I mean; what was the law 10 years ago is, in many cases, very different to what the law is held to be now, without the aid of an Act of Parliament?—Without the aid of an Act of Parliament.

1602. At the beginning, I think it was shortly after 1881, it was held by the Land Commission that where a tenant had made a recent purchase, no matter how high the rent was, or how much he had paid for the interest of the seller, the rent should not be changed?—Yes, I believe that is so.

1603. The law has varied in that instance since in favour of the tenant or the purchaser, has it not?—We hold now that the tenant sells the interest in the holding, and the purchaser buys that interest with the right to come in and have the rent fixed.

1604. But those unfortunate tenants who got their rents fixed at that time are still bound by it?—That is so.

1605. And will be during the statutory term?—Yes.

1606. Now a large number of tenants, too, got their rents fixed before these words "accommodation land" and "demesne land" were so extended as they are now, did they not?—Yes.

1607. And as to the present tenants who were kept out by reason of the later decisions, do you think it is fair that the tenants who were so kept out have to compete at a higher rent?—That is a matter of policy.

1608. You believe, at all events, that these tenants who have got their rents fixed under unfavourable conditions would be entitled to get it reviewed if there were any change in the law now?—Of course on a review of their rents, were a change in the law of that kind to take place, very different conditions would be applied.

1609. As another illustration of the inconsistency of the decisions, I find that Timoleague, with a population of 360, has been held to be a town?—It has.

1610. Whereas I find here in Cherry (p. 330) that Portglenone, with a population of 800, and Newmarket, with a population of 765, were held to be not considerable enough to be towns?—Yes, that is so.

1611. Similarly Borrisokane, with a population of 700, and Kirkcubbin, with a population of 600, have been held not to be towns?—Yes, that is so.

1612. So that the policy of the decisions, at all events, seems to be to extend the definitions of towns down to a cluster of houses?—Yes.

1613. I mentioned a case to you the other day in Dundrum; I do not know whether it was then made clear that the definition of "town" is whether it was or was not a town, I believe, at the passing of the Act of 1881?—Yes, that is the period at which all these holdings are tested.

1614. And in the case of Thomas M'Cann it was held, was it not, by the Chief Commission, that it was not a town at the passing of the Act of 1881?—Yes.

1615. And a few days or a few weeks ago, in the cases of Mrs. Hugh M'Cann in the same town, and of Savage, in the same place, it was held by the Chief Commission, notwithstanding their previous decision, that this same place, Dundrum, was a town at the passing of the Act of 1881?—Of course that decision of Caledon *v.* Archer

Mr. *M'Cartan*—continued.

Archer has quite upset a large number of the previous decisions. I saw that Mr. Justice Bewley on Saturday last had practically reversed his own decision also in the case of Ballyjamesduff in Cavan, where he had held that Ballyjamesduff was not a town, and now on Saturday he has, under the decision in Caledon *v.* Archer, had to go back on that and hold that it is a town and dismiss the cases.

1616. The practical effect of it has been that they have not only reversed their previous decisions, but they have reversed the intention, if I may say so, of the framers of the Act of the Legislature?—I cannot say as to that.

Chairman.

1617. May we take it that there is now no established definition of a town?—There is no population limit, now, as to what should be a town.

Mr. *M'Cartan.*

1618. I understood you to say that it depended very much upon whether it was accommodation land or not, that land adjacent to a town, or a "place," as it was afterwards called, if it has increased value by reason of its proximity to the town, it may be considered a town park, if it belongs to a person living in the town?—Yes, if it belongs to a person living in the town.

1619. Would not that same land have an increased value if it was in the hands of some person not living in the town?—It would.

1620. It is not the residence in the town that gives increased value to the land?—No.

1621. It is its proximity to the town?—It is its proximity to the town, yes.

1622. If a person happens to live out of the town it cannot be held to be a town park, but simply because he happens to live in town it is held to be a town park?—Yes.

1623. What would happen in the present state of the law at the end of the 15 years to those tenants who have got their fair rent fixed in places which were not then considered towns, but which since, owing to the decisions, have been deemed to be towns, or in any other case?—Of course, that raises the question as to how far the decision on the first fixing of the fair rent estopps the raising of the point on the second fixing, which is a matter of very considerable importance.

1624. I should like very much to have your opinion, you may have to give it?—Yes; but I should like to give it after careful argument.

1625. At all events it is a difficulty?—Undoubtedly.

1626. And the same thing would hold good of all other cases of exemptions that have since been exempted?—Yes.

1627. It will arise in 1896?—Yes; or in 1895.

1628. There is another class of exemptions which has not been touched yet, the class of divided leaseholds; that is, where the landlord has given a leasehold, say, 30 or 40 years ago, or longer, of a large holding, and with the consent of the landlord it has been subdivided, perhaps between sons, or at all events the holder and different persons, and where the landlord has given to each person a separate receipt and considers him a tenant. Can any one of those come into Court and get a fair rent fixed?—No; that question has been discussed at great length by Chief Baron Palles in the case of Ireland *v.* Landy; and in that case, where a subdivision such as you have mentioned happened at the expiration of the lease, the Chief Baron held that, although each of the two occupiers had his own portion of the leasehold, and paid his own portion of the rent, that did not make two separate tenancies, but made what is called a conjunct tenant, and that to get the rent fixed they were obliged to come in as one tenant.

1629. Then if one of those three tenants had friendly relations with the landlord he might make an agreement with him which would preclude the other two from ever getting a fair rent fixed?—Yes.

1630. They would not be "a conjunct tenant"?—It might result in the creation of future tenancies on the part of the other two; and in fact Mr. Justice Bewley, I think, in a recent case in Cork, did throw out a doubt as to whether in such case future tenancies were not created between the parties. I may say in reference to this case of Conroy *v.* Marquis of Drogheda, that I referred to on the last day as a case dealing with the contracting out of tenancies, that I have since found that it is an unreported case. The judgments of the Court of Appeal have not yet been reported in the authorised reports, and I find there is a great deal of difficulty in coming to a decision as to what was decided in it. Some lawyers in Ireland have held that it decided a very different thing to what others hold, and until the Committee see the report in that case, it might be well not to draw any very strong conclusions from the statement I gave with regard to it on the last day. What it does really appear to decide is this: the previous law with regard to the creation of future tenancies is this: that if a tenancy was a present tenancy at the passing of the Act of 1881, and if subsequently a portion of land was added on to that present tenancy, and the tenant held on in possession of the present tenancy and the bit that was added on, that did not destroy the present tenancy; and when the court came to fix the fair rent they could get rid of the piece that was added on, and proceed as regards the original present tenancy.

Chairman.

1631. Could they take the added piece into account?—No.

1632. They could not fix a rent for that?—No; they would throw it aside practically.

1633. It did not destroy the rent fixableness of the first portion?—Of the first portion, but that apparently has been upset by this decision of Conroy *v.* Marquis of Drogheda.

Mr. *T. W. Russell.*

1634. And that you say we should wait for?—Which you had better wait for; but the result of the judgment in that case was that the addition of the piece of land was practically a new tenancy, a future tenancy.

Mr. *M'Cartan.*

1635. With reference to town parks there is one thing that I omitted to ask. In the town park, I believe the reason a landlord was supposed to be anxious to hold it as town parks is this: he may require to take it into his own hands in the interest of the town or of the estate?—Yes.

1636. As the law is it leaves practically the owners of town parks at the mercy of the landlord; they are subject to eviction, are they not? Yes; they are outside the Act of 1881, and they have not got any of the provisions of that Act in their favour.

1637. And the landlord can increase the rent as much as he likes or put them out?—He can deal with them as he can deal with the occupier of a town house.

1638. Do you not consider that the landlord has ample protection under statutory conditions in case he requires the land either for building purposes or in the interest of the estate; it says here: "during the continuance of a statutory term in a tenancy, save as hereinafter provided, the court may, on the application of the landlord, and upon being satisfied that he is desirous of resuming the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate, including the use of the ground as building ground," and certain other things. Do you not feel that that is quite sufficient protection for the landlord, and that in the interests of the people of the town it should be deemed to be sufficient?—It gives the landlord the power of taking up any portion of the land required for building.

1639. Just the same as other holders of land previous to the passing of the 1881 Act?—It would apply of course to the holders of town parks as well as to any other tenant.

1640. There is another class, I do not know whether it is referred to or not, rather an important class in some parts of Ireland—mill farms; have you met with many of those cases of mill farms?—Yes; I have met with a good many of them, in the county of Armagh especially.

1641. I suppose you have felt inclined in some of those cases (many of them I would say) to reject the application of the tenant although it was manifestly a holding held for agriculture?—The law is that if any substantial portion of the land or holding was demised as a mill, the entire holding is excluded.

1642. There is another point which I do not think has been mentioned yet, that is this; after a tenant gets a fair rent fixed in the court below, if he happens to be in arrears of rent I understand it is open to the landlord to get an ejectment against him?—Yes; the fair rent of course only deals with the rent accruing from the commencement of the statutory term.

1643. And the landlord may, after he gets an ejectment decree, serve an eviction notice on the tenant between the hearing and the appeal?—Yes, he has the ordinary remedies to recover the rent that accrued due before the granting of the statutory term.

1644. The effect of that would be that when the appeal against the fair rent was heard, and when the tenant came before the Court of Appeal or the Chief Commission, he had no status at all, he was merely a caretaker?—Yes, that is so.

Mr. *M'Cartan*—continued.

1645. Previously, before the passing of that clause, the tenant would have had to be put out, and put out for six months, before such an effect could happen?—As soon as the tenant is put out of the possession of the holding his application either to the Sub-Commission or to the Chief Commission is at an end until he redeems.

1646. I understood you to say that the Chief Commission in reviewing or rehearing the appeal cases of course depend entirely upon the evidence given in court, and by the court valuers; they never go to view the farms?—Oh, no, they never go to view the farms.

1647. And they sometimes upset the decision of the Sub-Commissioners who have gone out to inspect the farms?—Necessarily.

1648. You read I think from the return that the rents increased some years before, up to 1994, about 0·2; that was the general effect on the rents?—Yes, on appeals from 1881 to 1894; that is appeals from Sub-Commissions.

1649. It is scarcely fair to ask you, you being a Sub-Commissioner, but I cannot help it. Do you consider that a great deal of money would be saved, and a great deal of time too, in cases of these questions of value and matters of fact, if the Sub-Commission were the final court?—That of course stands to reason.

Mr. *Leese.*

1650. Just one question; I do not quite understand you. You spoke of certain non-contentious cases that came into your courts; I do not think I fully understand what you mean by "non-contentious;" will you explain that?—I was referring to applications to revise a judicial rent, and I said it would be possible to suggest a means of dividing the applications into contentious and non-contentious cases; that is, if the tenant served his notice, and put on the back of it the improvements that he claims credit for in the revision, and if the landlord upon getting that notice made no objection to the claim that the tenant made on his notice, that then that case might be regarded as a non-contentious case, and that it might be sent down to a single valuer to make a valuation.

1651. The effect of that would be that the Court would make an order as a matter of course; it would be a consent order?—Yes.

1652. Have you anything in the nature of a registrar in your courts, or an officer who takes such non-contentious cases as they do in England in the county courts?—No, we have a registrar, but his position would not enable him to fulfil that duty. Our registrar is entirely concerned with a notification to the parties and with the examination of the various documents that are put in at the hearing, and matters with regard to following up the orders and so forth.

1653. Just one other thing. You said, I think, that there were 294,000 cases where the fair rent had been fixed?—Yes, I think those are the figures.

1654. And that that left about a quarter of a million

Mr. *Leese*—continued.

million cases still to be dealt with; that is to say, the other quarter of a million added would make up all the holdings in Ireland now?—I did not mean by that that they were all outside the Act, but that they had not had rents fixed.

1655. What you said was, as I understood it—if I am wrong correct me — that there were 294,000 cases where rents had been fixed?—Yes.

1656. And you said that there were about a quarter of a million left on holdings where they had not been fixed?—Yes; where either no applications have been made to fix rents, or where rents have not been fixed.

1657. It is the same thing?—Yes.

Chairman.

1658. Either because no applications have been made, or for some of the reasons and exclusions which you have been specifying to the Committee?—Yes.

Colonel *Waring.*

1659. Or because the present tenants have considered their rents reasonable?—Yes.

Mr. *Leese.*

1660. It does not matter what the reason is, of course?—Quite so.

1661. I want to know, as a matter of information, and perhaps as something that may lead to a suggestion of improvement, what size of holding, or what rents can you say generally have been the cases that you have fixed; have they been large or more or less small farms high-rented or low-rented, or about what?—As regards size they vary from an acre up to a thousand acres.

1662. What is the bulk of them; have you got any return of that kind?—I do not think there is any classification as regards the acreage of the holdings.

1663. Nor of the rent?—No; I shall seek to find out if there is such a return, but I do not know of any.

1664. I shall be rather interested in seeing it if there is such a return?—I shall see if I can find one.

Mr. *Fuller.*

1665. I should like to know about the improvements; how far back may you take into your consideration improvements for drainage, buildings, and so forth?—If the improvement is the property of the tenant as regards buildings, of course we simply leave it out of consideration; we put no rent on it, no matter what its age may be.

1666. There is no limit?—There is no limit.

1667. Then, as regards the predecessor in title, I suppose that goes back as far as you can trace the title; is that so?—Yes; as long as there has been a succession of tenants, one following on the other, without a break of title. Of course, if the landlord came in, and let it to another tenant, then you would have a break of title from which you should start afresh.

1668. Are those breaks of title very frequent?—Oh, yes.

1669. Do they put out of Court a great number of applicants for a fair rent?—No, the break of title, unless it has taken place after 1881, will not put a tenant out of Court.

Mr. *Fuller*—continued.

1670. Then, as regards effective improvements, I understand that the tenants' improvements, unless they are effective, are not taken into consideration at all?—That is so.

1671. But in the case of a landlord making improvements, you then take into consideration how far they improve the letting value of the land?—Quite so.

1672. So that in the case of drainage, if a tenant laid out a certain amount of money which improved the value of the land considerably, you would only give him, as I understand, a percentage of his outlay, whereas you would give to the landlord the full benefit of the letting value of the land consequent upon that drainage?—Quite so.

1673. And in that case, taking your instance of the 5 per cent., would a tenant be allowed the 5 per cent. on the *5l.* per acre; taking *5l.* per acre as the value of the drainage, would he get his value of *5s.* upon that?—Yes, he would get the percentage on the cost of doing the work.

1674. Suppose that land was improved to the extent of 10*s.* per acre, would the landlord get the whole value of that 10*s.*; supposing he laid out the *5l.* instead of the tenant, would he get the whole value of that 10*s.* improvement?—Yes, the landlord would get all over and above the amount allowed to the tenant as against the doing of the work.

1675. Is that generally accepted as a fair system in a tenant's point of view, so far as you have heard in cases before you?—I do not think it is. I have practically never heard that argued. That is the principle now, because the law has been accepted as settled since Adams *v.* Dunseath, and there is no use in discussing it.

1676. The law has accepted it?—Yes.

1677. And so you act upon it?—Yes, quite so.

1678. As regards valuation of cattle, I understand that you value hill lands, what we should call in our country common lands, according to the number of head of cattle that they will bear?—Yes; in the south of Ireland, where a great deal of the valuation of the land depends upon the feeding capacity of the farm the valuation is very largely carried on with reference to the number of "collops" as they are called, the number of head of cattle it will feed.

1679. Then supposing you have under your consideration 300 acres of mountain land, which would be capable of carrying—how many animals shall I say—20 or 30, or something of that sort?—Yes.

1680. Supposing the value of those animals goes down 20 per cent., or something of that sort, do you take that into consideration in the letting value of that mountain land?—Of course, the rents that we fixed for this year, or last year, or the last two or three years, have been based, or attempted to be based, upon the consideration of the prices that could be got for the produce, whether cattle or otherwise, on that particular class of land, mountain land, or dairy land, or tillage land.

1681. So that it is practically impossible to fix a fair rent to be suitable for all time?—Utterly.

Mr. *Fuller*—continued.

1682. It must vary from year to year?—Yes; for example, the economic conditions of Ireland have completely altered, become quite transposed, from 1850 to the present day. In 1850, tillage lands were the valuable lands as regards rent-producing capacity; now it is pasture land. Suppose you had fixed fair rents in all Ireland in 1850, they would be bound to be wrong rents now; they could not be fair rents now.

1683. That would answer to this, that Mr. Fitzgerald told us, that between 1885 and 1887, in the general value, there was a fair rent fixed of 18 per cent. reduction in 1885, and of 31 per cent. in 1887; assuming those figures to be correct, would that be in consequence of the fall in the value of animals, or in consequence of any decision of the Court as regards valuations?—It is mainly owing to the fact that, about 1886, it became evident to the valuers in Ireland that the condition of agriculture, the rate of prices, and the general circumstances which affected the fixing of a fair rent had suffered a serious decline, and they proceeded then, in fixing their rents, to take that decline into account, with the result that a very much larger standard of reduction was given.

1684. And is that depression still increasing now; would the 31 per cent reduction of 1887 be still lower now?—Of course the mere percentage will not give you a fair estimate, for the reason that the class of cases that may come in in one year may not be a class of cases that would deserve the same reduction as those that came in in another year.

1685. Now one question about fee farm grants; I understand that the buildings are all taken into consideration, and the tenant can be, and is, rated upon his buildings upon his own outlay?—Yes, in the case of a fee farm grant the holding as it stands is subject to rent.

1686. I do not quite understand the justice of that. Is it in consideration, do you suppose, of the fee farm grant being low that the tenants' improvements are expected to be carried out by inference under covenant?—I would hardly like to say. I know how it worked out; I know on what it was based, but then the principle is perhaps a highly technical one, namely, that as fee farm grants did not come within the provisions of the Act of 1870, and as it was held that no holding was to be freed from rent on the tenants' improvements unless it came within the provisions of the Act of 1870, consequently a fee farm grant was entirely excluded.

1687. That is practically following on a defective condition of the law?—Quite so.

1688. With regard to the proximity of towns, do you consider land near a town of a higher value than land further away? Is that done by any set rules by the valuers?—That depends entirely upon the nature of the demand in a particular town. You cannot have a rule that will apply to all towns, for one town may have a very large increased value arising from proximity.

1689. I only want to get at this,—whether you have one system of valuation throughout all the valuers, or does each valuer take his own idea of what the value of the land may be?—As a rule, there are no instructions issued which could bring about any uniformity, but you have, as a rule, to follow the idea of each particular valuer; but, of course, the more they exchange ideas among one another the more they get the same views as to what should be allowed.

Mr. *Fuller*—continued.

Mr. *T. M. Healy.*

1690. Ulster is largely in tillage, is it not?—Yes.

1691. And Munster is largely in pasture?—Quite so.

1692. I suppose it would be almost fair to say that three-fourths of Ulster is in tillage, and that three-fourths of Munster is in pasture?—Yes I think it would.

1693. So that the conditions in Ulster from what they were formerly—the conditions as to prices, and so on—have entirely changed we may say?—Yes.

1694. And it follows that there are more improvements of tillage lands than there are of pasture lands?—Quite so.

1695. The keenest conflict between landlord and tenant in Ireland has gone upon the question of improvement, has it not?—Yes.

1696. You were asked with regard to the rules of the Land Commission compelling the tenant to endorse on his notice a list of his improvements?—Yes.

1697. These rules are dated December 1883, are they not?—They are.

1698. That was in consequence of the action of the House of Lords' Select Committee which raised the specific question, was it not?—I am not personally aware of that.

1699. The House of Lords' Committee met in the year 1882, did it not?—Yes, in 1882; that is so.

1700. They went into the question of improvements, and thereupon the Land Commission made a rule, to suit the views of the House of Lords?—Of course I do not know that.

1701. Would there be any difficulty in a rule which should compel the Land Commission to state on the fair rent order the exact allowance for improvements; would it involve any trouble?—No, I do not see any trouble that that would involve.

1702. Do you think it would give satisfaction generally to the tenants to know that so much of their improvements had been allowed for?—Personally, I think it would give satisfaction to both landlords and tenants to know what the Court had done—the actual amount that had been allowed as against improvements.

1703. You stated in reply to Mr. Sexton that if the Commissioners dissented the public had the value of the statement of dissent; but have not the Land Commission recently made an order, to preserve the unity of the Land Commission, that the dissenting Sub Commissioner was to hold his tongue?—I do not think there is any rule of that kind. On my Commission we have not much experience as to dissents.

1704. Take the case of Colonel Bayly: was not he a well-known dissenter, in favour of the tenant, from the views of his Sub-Commissioners?—Well,

Mr. *T. M. Healy*—continued.

—Well, I have heard that he dissented a good deal at one time.

1705. Was not Colonel Bayley shut up by order of the Land Commission?—I have no personal knowledge of it.

1706. May we take your hearsay evidence on the point?—I prefer to adopt the ordinary rules of evidence of a court of justice.

1707. Therefore it comes to this, that in recent times and at late dates, and sympathising with certain changes which took place in the *personnel* of the Land Commission, there have been no dissent amongst Sub-Commissioners?—I have not heard of many, I must say.

1708. To what do you attribute this strange unanimity?—In the case of my own Commission (for which only I can speak with authority), as a rule we so well manage our discussion and conference, that we come to a unanimous conclusion as to what the result should be.

1709. Invariably?—Almost invariably. There have been some cases where some of my Commission have dissented from me, but very rarely.

1710. Publicly?—Publicly.

1711. How long ago was that?—I really do not think I can remember any dissent for the last four years.

1712. Did you follow the *Hegira* of Colonel Bailey to the country?—No, I did not.

1713. Was he not shifted from Commission to Commission?—I know he was not on my Commission; I never had the pleasure of having him with me.

Mr. *T. M. Healy*—continued.

1714. Whenever he dissented, was not he, as a rule, shifted out of that Commission and sent to some other part of the county?—I cannot give you that information, for I have no knowledge of the changes.

1715. Do you think it would be of advantage, in the working of the Land Acts, if the landlord was compelled to give notice to the tenant, on receiving the tenant's originating notice, of any law points that he intended to raise as to his status?—Of course it would be of advantage, in enabling the parties to see at once what were the questions they would have to meet at the hearing; but at the same time I can see certain inconveniences that might result; for very frequently it is during the progress of the evidence that very important law points appear; and, of course, if you had such a rule, probably the result would be that these points could not be raised at the hearing below, and that would lead to an appeal, and they would be raised on the hearing above.

1716. Have you noticed the curious difference between the rules as to the service of the eviction notice, turning a tenant out of his holding, and the service of the fair rent notice, trying to get himself a fair rent. I call your attention to the rules in Cherry, pages 473 and 528: The originating notice must be served "either by personal service of a copy thereof, or by leaving a copy thereof at the house or place of business of the person intended to be served, or at his office, warehouse, counting-house, shop, factory, or place of business," and so on?—I see that.

Wednesday, 9th May 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Clancy.
Mr. Dillon.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HON. JOHN MORLEY IN THE CHAIR.

Mr. W. F. BAILEY, again called in; and further Examined.

Mr. *T. M. Healy.*

1717. I THINK yesterday we were on the point of the difference, as against the tenant, between the service of the eviction notice and the service of the originating notice. I call your attention to the rule which you find in Cherry at page 528, showing that service of an originating notice must be personal, or that it must be left "at the house or place of residence of the person intended to be served, or at his office, warehouse, counting-house, shop, factory, or place of business, with the wife, child, father, mother, brother, sister, or any relative," and so on, except in certain cases in which it "may be effected by registered letter," and, under Rule 30, "wherein any notice served on behalf of the landlord the address in the United Kingdom of such landlord or of his agent is stated pursuant to the forms hereby settled, service of any future notice on such landlord in the same proceeding may be effected by registered letter"?—Yes.

1718. That is under the Land Acts?—Yes, under the Rules of 1883.

1719. And when the High Court had to consider, under the subsequent Land Act of 1887, the question of service of the eviction notice, I call your attention to Rule 5, page 473, of Cherry: "Service of the notice mentioned in the 7th section, by sending a copy thereof in a registered letter addressed to the tenant, and by sending a copy thereof by registered letter to every person served with a writ in such ejectment, who at the time of the service of the notice shall be in possession of the land, addressed to every such person upon the land, shall be good service of such notice on all the persons required to be served therewith under the provisions of said section." Now, do you see any reason why the service of an originating notice upon a landlord should not be made as easy as the service of an eviction notice upon a tenant?—No, I do not. Of course, the main object to secure in service is to make sure that the person really gets the notice, and that there can be as little danger of miscarriage

Mr. *T. M. Healy*—continued.

as possible. You must have certain formalities which will make sure that the person you want to bring into court gets proper notice. You must have reasonable formalities that will secure that he gets it; and of course if the rule with regard to the service of the eviction notice is found to work satisfactorily, I certainly do not see why the rule with regard to the service of the fair rent notice should not be made the same.

1720. Which do you think is the more important process, the putting of a man out of his holding or fixing a fair rent; do not you think one has rather higher consequences than the other?—Undoubtedly it is the more serious in the first case you put.

1721. Again, there have been a number of decisions on this question of service of an originating notice, page 529 of Cherry: "Where there are two or more landlords, all must be served; service on one part owner not being good as against the others"?—Yes, that is so.

1722. Have not a number of inconveniences arisen to tenants where a landlord has died: "Where a landlord dies after having been served with an originating notice, it is necessary to serve his representative"?—That is so; and in such a case we have to adjourn the application in order that representation may be obtained, or that some form of legal representation may be taken out on the part of the successors to the deceased.

1723–4. Was it not found possible in the county of Armagh, the question being raised of succession to the dead landlord, to baffle the tenants in their attempt to get a fair rent for a very long time?—In Armagh. Well, there was a case before me, a case, I think, on the Shaw Estate, under the Redemption of Rent Act, where we had to adjourn the applications. I think it was last summer. We had to adjourn them for some months, in fact, I think we had to adjourn them on two or three different occasions in order that they should find out who the landlord was, or who

Mr. *T. M. Healy*—continued.

who the successor to the deceased landlord was; and there was great difficulty in doing that.

1725. Where the landlord resides in England, is not there great difficulty frequently on the part of the tenant in finding him out, and effecting service?—Yes, that is so; however, there is one cure in the end; it may certainly cause delay, but it, undoubtedly, is cured in the end by the fact that the tenant ceases to pay rent until he finds out who the landlord is; so that eventually, by that means, he will succeed in coming across the landlord; but that process, of course, will take a very considerable time.

1726. Do you see any advantage in the rule to the effect that a registered letter addressed to the house at which the tenant pays rent, and in the name of the person in his last rent receipt, should be held good service of an originating notice?—I do not see any objection, for this reason, that if the landlord can really show the court afterwards that he did not get the notice we invariably give such an adjournment as will enable him to prepare his case properly.

1727. You were asked a number of questions, at various stages of this inquiry, as to the earmarking of the improvements in the fixing of the fair rent. Now, I wish to call your attention to the House of Lords report upon this subject (the report of 1882), and I wish to ask you: Do you agree with the view of the House of Lords in the recommendation that they made upon this point. There are two reports, an *ad interim* report and a final report, and in both of them the House of Lords express an opinion contrary to the dictum of Mr. Justice O'Hagan. I will ask you to tell the Committee, after this lapse of time, which you think the more equitable. This is Lord Cairns' Committee, on which sat the Marquess of Waterford, the Marquess of Salisbury, the Duke of Abercorn, and a number of important peers. "The Committee are of opinion that it is very important, in the interest as well of the tenant as the landlord, that the Sub-Commissioners, in fixing a judicial rent, should determine and record both the fair rent of the holding absolutely, and also the sum which they find should be deducted from this rent in respect of the tenant's improvements. The knowledge of the rent assigned to the holding, irrespective of improvements, is necessary, with a view to the settlement out of court of disputes as to adjacent or similar holdings, and may be of much importance in questions as to the rental of the whole country, and the separate findings as to rental and improvements will greatly simplify appeals, inasmuch as both landlord and tenant may frequently be satisfied with the finding as to rental, and desire to appeal as to improvements only, or *vice versa*." Then they go on: "The Committee find that for some time after the formation of the Sub-Commissions the books issued to them for entering minutes of their orders contained two columns headed, 'Estimated value of tenants' improvements,' and 'Annual sum deducted in respect of tenants' improvements from present rent in fixing judicial rent.' These columns were, however, not filled up by the Sub-Commissioners, and have been latterly omitted from the Order

Mr. *T. M. Healy*—continued.

minute books. The Committee do not think that any sufficient cause has been shown why this information should not be required, at least as to holdings not subject to the Ulster customs, and they understand the Commissioners (although opposed to this information appearing) to be of opinion that the information could be given, and that it would be valuable." Then they make this important statement: "It is contended that it is the interest both of the landlord and tenant to have it decided and placed upon record once for all what improvements upon the farm have been made by the tenant in past times, and it is said that without such a record the authorship of now-existing improvements may again be brought into controversy at the end of the first judicial period of 15 years, and also that improvements existing at the commencement of the judicial period may hereafter be alleged to have been made at a later date." Do not you think that their Lordships showed great foresight and pre-vision in coming to that conclusion?—I thoroughly agree with the entire of that.

1728. Now let me call your attention to the objection of Mr. Justice O'Hagan, page 350, Questions 3746 and subsequent. Lord Cairns asked Mr. Justice O'Hagan: "Did I understand you to say just now that you had made a recent rule with regard to the specification of the improvements being taken into account?—(*A.*) Yes. (*Q.*) With respect to Sub-Commissioners mentioning what the improvements were that were taken into account?—(*A.*) Yes. (*Q.*) What is that rule; I do not mean the words of it but the general effect of it?—(*A.*) It is a form that they should fill up, stating what improvements were established before them as having been made by the tenant. (*Q.*) Will that come into operation in the present sittings for the first time?—(*A.*) It will come into operation in the present sittings for the first time. (Marquess of *Salisbury.*) But they are not to state the value?—(*A.*) No, we abstain from stating the value, upon the grounds I have stated to your Lordships." Now, in the second report (their Lordships having heard further evidence), the report which follows in Volume xiii of 1883, p. v., they say: "It has been impossible to ascertain in what manner the Sub-Commissioners, in holdings subject to the custom of Ulster, have treated improvements; whether they held the tenant right to include all improvements, or whether they estimated their value separately. (Smith 370–381.) The same Sub-Commission, differently constituted as regards its members, has reduced two sets of farms adjacent and similarly circumstanced and rented, the one by 16 per cent., and the other by 30 per cent."; and after that they refer to the evidence of Mr. Greer, who is not I believe the present Sub-Commissioner of that name. Then they say, paragraph 21: "Complaint is also made that there is no sufficient record showing what improvements have been proved to have been made by the tenant and have been allowed for as affecting the rent. The Committee in their first report expressed an opinion that some record should be made of such tenants' improvements as were proved in evidence; and they stated that they had heard with satisfaction that the Commissioners had, since the commencement of the inquiry,

Mr. *T. M. Healy*—continued.

inquiry, adopted a rule for the purpose of meeting this complaint, and that the Sub-Commissioners would, henceforward, be required to specify the improvements made by the tenant. The Committee regret to find from the evidence of Mr. Baldwin (1084–1096) that the form adopted by the Commissioners in order to meet this complaint has proved useless; and they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made, and preserved, a distinct specification of the improvements established by the evidence, and of the value assigned to them in the settlement of rent." Now, as I understand, you specify in the pink paper, which is not legal evidence in any inquiry, the number of the improvements?—Yes.

1729. And in no document do you specify or earmark the amount of allowance made off the rent in respect of them?—No; that is so.

1730. Now, here is Mr. Justice O'Hagan's report on the Lords' recommendations, and I propose to ask you, having regard to the length of time (10 or 11 years) that has elapsed since then, what in your judgment would be fair to landlord and tenant? I am quoting from Papers 57 of 1883, p. 14, and it is headed: "Observations of the Irish Land Commissioners on the fourth Report of the Select Committee of the House of Lords on Land Law (Ireland)," and it appears to be a kind of dominical drawn up by Mr. Justice O'Hagan: "Observations of the Irish Land Commissioners on the fourth Report of the Select Committee of the House of Lords on Land Law (Ireland)." The remarkable thing about it is, that it is unanimous; it is signed not only by Mr. Justice O'Hagan and Mr. Litton, but by Mr. Vernon and Lord Monck, who was then a member, and is now a member of the House of Lords. Mr. Justice O'Hagan says, having quoted the observations which I have just read: "It is quite true that the Commissioners have adopted a rule requiring the Sub-Commissioners to specify the improvements proved before them, both by the tenant and the landlord. It is not the case that the form adopted by the Commissioners for this purpose has proved useless, but it is the fact that in many instances the improvements have been imperfectly specified. The Commissioners have deemed it their duty in some instances to call the attention of the members of the Sub-Commission to the inadequate filling up of the schedules in this respect, in order that this duty may in all cases be properly discharged. On the subject of inserting, in addition to the specification of the improvements, the value assigned to them in the settlement of rent, the Commissioners have already stated their opinion in their observations on paragraph 11 of the report, and they must act on that opinion so long as the decision on the subject rests with them;" and unfortunately paragraph 11 of the report does not say anything whatever on the subject that I can glean; it is simply an observation about Mr. Baldwin. Paragraph 11 is at page 10, and all it says is this, having quoted Mr. Baldwin: "It will thus be seen that the principles which guide

Mr. *T. M. Healy*—continued.

Mr. Baldwin in arriving at the letting value are derived from his personal experience and skill. These accomplishments, of course, render him more fit to discharge his duties as Assistant Commissioner, but how they could be communicated to others in the form of principles the Commissioners fail to see. It may be quite true, as Mr. Baldwin says, that "the principles are laid down in a standard work; but the Commissioners conceive it to be in accordance with the procedure of courts of justice, to take the materials for decision from the lips of experts, rather than from books." Now, you having heard the views of the House of Lords, and of the then Land Commission, none of whom, I believe, are now in office, either from death or other causes, I have to ask you, would you consider it reasonable and equitable to the landlord and tenant that the views of the House of Lords should be carried out?—Yes, my personal opinion is, that in all these matters the various items that go to affect the rent should be accurately stated in detail, and I think that the actual amount which is allowed as against the improvements, either to landlord or tenant, should be stated clearly on the face of some report to which the parties would have access.

Chairman.

1731. In detail?—Well, I think I would even go so far as to say that I would state the amount for each class of improvements.

1732. That is what I meant?—I think that that procedure would, in many cases, save appeals; the parties would know what was allowed to them, whereas, now they do not know, and they very frequently appeal on the strength of their ignorance.

Mr. *T. M. Healy.*

1733. Is not there this important reason in addition, which was given by the House of Lords in their first report, namely, that at the end of the 15 years, and especially as time goes on, there will be an enormous difficulty in obtaining legal evidence of the improvements?—Yes, that is so.

1734. The "pink paper," as we have called it, is not admissible in any court of law, is it?—No, it bears no stamp, it has got no sanction of the court, which would entitle it to be received in evidence.

1735. So that in 50 years' time, if the pink paper were produced showing that in an enormous range of buildings, out-offices, a great number of drains, a great number of reclamations, and so on, had been allowed to the tenant by the then Commission, and the parties who had made them had passed away, the tenant might, under the present presumption of law, be excluded from having the benefit of those improvements?—Yes; of course I take it that the Land Commission themselves would pay attention to their own previous reports; but, as a matter of legal obligation, I do not see that it would have any conclusive weight.

1736. Suppose, in addition to that, it became a question of the allowance of the Ulster custom, take Lord Portsmouth's cases, in which we established a usage extending the Ulster custom

Mr. *T. M. Healy*—continued.

custom in the county of Wexford; it was on a pink paper that that was recorded; suppose it became necessary afterwards to establish the Ulster custom in that part of the county of Wexford, there would be no means of doing so, without a fresh rehearing?—Yes, that seems to be the case.

1737. Would you see any difficulty in embodying in the fair rent Order, or endorsing on the back of it, all the incidents of tenure which went to affect the minds of the Commission in fixing a fair rent, and which would be legal evidence?—No; I do not see any difficulty. In the present Order fixing a fair rent, we do specify certain matters with respect to area and the old rent, and the tenure under which the tenant holds. I do not see that there would be any greater difficulty in recording those other matters that you refer to.

1738. The fair rent Order, as I understand, is receivable in courts of justice?—It is. On the present form of Order, there are two Schedules endorsed, one giving the particulars of the holding, the area in statute measure, the rent of the holding and the gross valuation; and on the second Schedule in a lease case, it gives the date of the lease, the name of the lessor, the name of the lessee named in the lease, the term of the lease, and the rent reserved by the lease, and I do not see that there would be any greater difficulty in adding a third Schedule, giving those particulars.

1739. Now, you were asked yesterday, on what will be the next great and important crux in connection with the Land Acts, whether you had any view as regards the tenant who has once had a fair rent fixed, as to whether the landlord was estopped from denying his status. May I ask you this question: Is not the view which prevails amongst laymen, that a fair rent Order is impregnable, simply a popular delusion?—Oh, yes; undoubtedly. Peyton *v.* Gilmartin established that on one branch of the case; and Hemphill *v.* Fraser also established that where the statutory term was fixed without jurisdiction, it might be upset by any court that afterwards had the right to consider the case.

Chairman.

1740. A statutory term fixed without what?—Without jurisdiction. If the Land Commission Court fixed a fair rent and another court held that they had fixed it without jurisdiction, that fair rent Order may be made a nullity.

Mr. *T. M. Healy.*

1741. Does not that work round to this: A tenant gets a fair rent fixed in the Land Court, and supposes in his innocence that he has thereby obtained protection for the 15 years and the year subsequently; the landlord serves him in the Civil Bill Court with an ejectment on the title; that ejectment on the title will come before a judge and a jury or a judge without a jury; and if the judge without a jury thinks that the Land Commission were wrong in fixing a rent, he grants the ejectment altogether irrespective of the fixture of the fair rent and the granting of the judicial term?—Yes, that is so.

1742. Have you had any cases; Dundrum has

Mr. *T. M. Healy*—continued.

been mentioned. At different times the Land Commission have held differently with regard to town parks. They first held that Dundrum was not a town within the meaning of the Act; they then said it was a town, and the tenants in the town were excluded from the Land Act. Was not there a case before Judge Holmes with regard to this very town of Dundrum, in which he granted an ejectment on the title where a tenant had had a fair rent fixed?—Yes, there was. That was a case, I think, on the Marquess of Downshire's estate, where I fixed a fair rent. The question had been raised that there was a future tenancy, that the present tenancy had been destroyed by some alterations that had taken place in the status of the tenant. I held on the evidence that the present tenancy was not destroyed, and I fixed a fair rent, and subsequently Mr. Justice Holmes went into the evidence again and held apparently that there was a future tenancy or no tenancy and gave a decree in ejectment, so that the Land Commission Order was, of course, ignored.

1743. Does not that solve, in a sense unfavourable to the tenant, a question put to you yesterday by Mr. M'Cartan, as to whether you could ransack at the end of the 15 years the judicial term which had been granted to the tenant?—Well, that would seem to be so.

1744. Therefore, practically, amongst lawyers, at any rate, there can be no question but that every tenant who has had a fair rent fixed now may have his title questioned to the continuance of that fair rent at the conclusion of the statutory term?—That may follow.

1745. And, I think, we may go still further, and say that from a legal point of view, on a point of principle, there is nothing to prevent the landlord now, with regard to the 300,000 tenants who have had fair rents fixed serving an ejectment on the title against them, and having that ejectment tried either by a judge without a jury, or if the valuation is sufficiently high, by a judge and jury?—Oh, yes; it is quite possible that the title of the tenant may be questioned in that way, irrespective of his having got a statutory term.

1746. Fixed?—Fixed under the Land Acts.

Chairman.

1747. At one stage?—Yes.

Mr. *T. M. Healy.*

1748. Therefore this notion of the protection afforded by the Land Acts is more or less a popular delusion is it not?—The court, I take it, must satisfy themselves at any rate that the tenancy is a determinable one, but our Order will not rule the matter as far as they are concerned.

1749. The Order of the Land Commission, as I understand, has no final validity in the Common Law Courts, or may have in certain cases no final validity in the Common Law Courts?—No, because the Common Law Courts have the right themselves on a question of ejectment or otherwise to consider whether the fixing of the fair rent was *ultra vires* or not, and they may decide that it was *ultra vires* and give judgment against the tenant.

Mr. *T. M. Healy*—continued.

1750. We have heard a good deal about Dumdrum and of the law having been settled differently. Timoleague has also been mentioned as another place. Is there anything to stop the landlord from serving these tenants with an ejectment on the title, and notwithstanding the fact that the fair rent has been fixed, turning them out, or putting them back to the old rent?—No; it would seem that he has that power; he can proceed in that manner.

1751. Therefore, as regards the recent decisions of the Court of Appeal, in so far as they have inroaded upon old decisions of the Court of Appeal, it is the recent decisions which will prevail and the former decisions which will be set aside, although the tenants have had to take their interests under the old decisions?—Yes.

1752. Now have not we had cases, especially in regard to grazings, where the Court of Appeal has, in regard to the same subject matter, come to decisions inconsistent with its own decisions? Did not Judge Litton comment very strongly in some of these cases (I think Mountgomery *v.* Fiddis was one of them, of course they are not reported), in which he showed that they had been following the Court of Appeal strictly, and that the Court of Appeal, owing to their decisions not being reported, had come to exactly opposite decisions. That is noted in one of the text books?—Of course the Land Commission often complain that they decide a class of cases on what they think is the law laid down by the Court of Appeal, and that the Court of Appeal afterwards denies that that is the law; in fact the Court of Appeal, I may say, generally refuses to lay down principles in land cases. They will decide every case, as they say, on its own facts, and, of late especially, they have resolutely refused to lay down any principles.

1753. I think the contradictory grazing case, which they decided dead in their own teeth, was the case which Mr. Justice Litton threw at them in rather a tart judgment, Montgomery *v.* Fiddis, was it not?—Yes; that was, I think, the case you refer to.

1754. Are not these contradictory decisions on the question of grazing putting in peril the whole position of the Munster dairy farmers in lettings over 50*l.* valuation?—I would say that it is very probable that many of those Munster dairy farmers could be brought within the recent decisions of the Court of Appeal, where the question of user of the holding is very largely dwelt upon as determining the purposes of the letting.

1755. Now will you follow me and see whether I state correctly the chain of decisions by which the Court of Appeal has arrived at its present position with regard to dairy and grazing lettings. Originally, I think, the exclusion was intended to operate, at least in the popular mind it was so supposed, owing to Mr. Butt's Bill to exclude the great graziers of the West of Ireland; is not that so?—Yes.

1756. In this case of Montgomery *v.* Fiddis, the Court of Appeal decided that they would only exclude the holding from the Land Act where the instrument of letting showed that the farm was let to be used for the purposes of pasture?—Yes.

1757. That is Montgomery *v.* Fiddis; but the House of Lords, in Westropp *v.* Elligott, on ejectment, as I understand, took a different view of the law?—Yes.

1758. And they held, as I understand, that you might *de hors* the instrument of letting, ascertain what was the object of the letting?—Yes, that was the principle they laid down.

1759. One judge said that if two men hired, one a boat to go from Maidenhead to Windsor, and the other—by exactly the same words—a dogcart to go from Maidenhead to Windsor, it would need no contract on the part of the hirers, to show that the boat was let to be used mainly for the purpose of travelling on the river and the dogcart upon the highway, the fact that the boat was to go by water, and the dogcart by land was easily ascertained?—Yes, that was the illustration used, I think, by Lord Watson, or by Lord Blackburn.

1760. Then upon Westropp *v.* Elligott, the case of O'Brien *v.* White was decided?—Yes.

1761. There, I believe, the court decided that if the farm was such from its physical character, that it had such an outcrop of rocks, that it could only be tilled by spade labour, and that it would be unprofitable and unhusbandlike to use a plough upon it, they would, apart from any instrument of letting, exclude that tenant from the Land Act?—Yes; that is O'Brien *v.* White.

1762. There is no doubt that a large portion of county Clare is in the position, especially in the Barony Burren, of the farm in O'Brien *v.* White?—Yes; it very largely consists of those crag farms on which you have rocks sticking up all over the land, so that it would be practically impossible to till it in the ordinary way.

1763. Then they came to another decision, in which they said that if the instrument of letting showed that hay could be sold off the land that was a determining factor in showing that the tenant had not taken the land for grazing solely, and therefore could get a fair rent fixed?—Yes.

1764. That was the next decision?—Yes.

1765. Was that Drought *v.* Stubber, or what was it?—In Drought *v.* Stubber, I think that point also arose, but it was also decided in one or two other cases; in fact, in several of the earlier cases, that question of meadowing was considered one of the determining incidents.

1766. Then they decided that if the letting showed that it would be unhusbandlike not to consume the hay on the holding, then you were excluded, altogether apart from the terms of the instrument of letting?—Yes.

1767. That is the last decision, is it not?—Yes; in fact it has come down gradually to regard what the Court of Appeal says is the proper use of the holding.

1768. You have stated to us that Munster is practically a pasture farm, and Ulster is practically a tillage farm?—A tillage country.

1769. I take it in the lump when I say "farm" there?—Yes.

1770. Have not the decisions therefore of the Court of Appeal come down to this, that if it is more

Mr. *T. M. Healy*—continued.

more husbandlike to grow cows in Munster instead of a green crop, Munster, practically, in cases where the farms are over 50*l.*, is excluded from the Land Acts?—A very large number of the holdings in the grazing parts of Munster undoubtedly would come under that risk.

1771. You might give us the name of that last decision in the Court of Appeal?—On the grazing question, the last case was the case of MacCormick *v.* Loftus, which was reported in 28 Irish Law Times Reports.

1772. Is it the fact that none of the decisions of the Land Commission, until they reach the Court of Appeal, will be admitted to the authorised law reports in Ireland?—Well, of late, I think, they have changed that rule. That was the rule undoubtedly: but I know they have reported the decision of the Land Commission in the case of Kieran *v.* Mollan, the end of last year, although it had not gone to the Court of Appeal.

1773. But may we not take it that, land being the chief industry in Ireland, and the Land Courts being the most important tribunal of that country, at least for ten years, the gentlemen having the management of law reporting in Ireland have excluded from the columns of their law reports anything relating to the most important work going on in the country until it has reached the Court of Appeal?—That is so; it is only quite recently they have begun to report Land Commission judgments.

1774. And there was no vehicle for the publication of those reports except the "Irish Law Times"?—Yes, that is so.

1775. Has not the result been that cases of enormous importance both to landlord and tenant are at the present moment absolutely without record; take O'Neill *v.* Cooper?—That is undoubtedly so. It causes a great deal of inconvenience to the Courts administering the Land Acts, not having the reports of very many of those important cases.

1776. O'Neill *v.* Cooper is a decision affecting tens of thousands of leaseholders, and if a lawyer or a tenant desires to get an account of the views expressed in it, it is absolutely impossible for him to do so, is it not?—Yes.

1777. And I suppose I may take it, that in hundreds of other cases which decide important principles, there is no record of what has been done?—Yes, that is so.

1778. And if these cases come up again at the expiration of the 15 years, we shall have all the exercitations of the past over again once more?—So long as you have not any authorised report of a case it is almost impossible to know what it really decided. There is that very case I referred to yesterday of Conroy *v.* Marquess of Drogheda, it has not yet been reported, and, although a case of very great importance, it is practically impossible to know what was really decided in it.

Mr. *T. W. Russell.*

1779. That is the case as to which you cautioned us not to trust to the statements you made?—Yes, not until you see the authorised report.

Mr. *T. M. Healy.*

1780. For instance, I think you yourself here, when asked by Mr Sexton, about cases under the Ulster tenant right as to free sale, said you were not aware of any case which had reached the Court of Appeal on the Ulster custom, as affecting free sale?—Yes, I think that is so. I do not know that there have been any cases, certainly no reported cases, that I can recall.

1781. Let me call your attention to the case of Lord Conyngham *v.* Boyle, decided on the 1st January last?—Yes, I do remember that case now.

1782. Does not that rather upset the evidence which you have given as to free sale under the Ulster custom?—No, because in that case it was proved that it was part of the custom of that estate to sell only in a certain manner and with certain provisos, and the decision in that case was that the tenant had not sold in accordance with the manner provided by the particular custom of that estate.

1783. But in explaining the Ulster custom to the Committee, I think you left the Committee under the impression that, as a rule, the tenants preferred to sell under the Ulster custom rather than under the free sale clauses of the Act of 1881?—Yes, and that I think is undoubtedly true where the custom is one without any particular reservation which limits the power to a narrower extent than the provisions of the 1st section of the Act of 1881.

1784. But is it not the case that the Ulster custom has proved to be so leaky and full of holes that the tenants prefer to avail themselves of the free sale clause of the Act of 1881?—That is the case according to my experience in several of the counties of Ulster, but it is not the case in the counties where the custom has been preserved in its larger and greater incidence.

1785. Now, take the county of Donegal, Lord Conyngham's estate; one would suppose the Ulster custom to be very thriving there. Was not this the decision—that Boyle purchased under the custom from the previous tenant, but because the rule of the office was that the landlord had the right to nominate the incoming tenant, it was held that Boyle was not entitled to buy, and the assignment was nullified?—Yes; in the case of Lord Conyngham's estate it was proved in court that it was a part of the custom that the office or the landlord had the right to require (I think) that the holding should first be offered to some neighbouring tenant on the same estate, that is to say, there was a distinct limit as to the public who might come in and buy.

Mr. *T. W. Russell.*

1786. That was a rule of the estate, was it?—That was a rule of the estate.

1787. What was the name of the estate?—It was the estate of the Marquis of Conyngham, in Donegal.

Mr. *T. M. Healy.*

1788. Boyle, in that case, had had a fair rent fixed?—Yes.

1789. And that fair rent was ousted, was it not?—I would not like to say that.

Mr. *T. M. Healy*—continued.

1790. It is so; his fair rent was set aside, and the sale was set aside, because it was held that the landlord had, by the custom of the estate, the right to name the incoming tenant; that is a decision of the Court of Appeal, is it not?—Yes.

1791. If that be so, may I ask you whether the Ulster custom can be the substantial valuable thing which people sometimes suppose?—A great deal of the value of the custom to tenants depends upon the extent to which it is allowed to prevail in its original vigour. On very many estates, and in very many districts, the custom has been very largely cut down. There is no individual or single custom which regulates all Ulster estates; each estate has its own custom.

Mr. *T. W. Russell.*

1792. I suppose that is the reason why "usages" was inserted in the House of Lords?—It was an amendment to the Bill of 1870, I know.

Mr. *T. M. Healy.*

1793. Take the free sale provisions of the Act of 1881; do not they apply in every case where there is a mere family transaction as well as where there is a sale in the open market?—Yes.

1794. Take the case of marriage; as we know, marriages are managed in a great part of Ireland. The father gives the farm to the daughter and the incoming bridegroom is made the tenant. In that case, as I understand, under the so-called free sale clause of the Act of 1881 the landlord has to get the regular notices as if it were a sale by auction, and the landlord may serve his cross-notice claiming to pre-empt at the true value; is not that so?—Yes; there was a case of that kind in the county of Dublin (I think you were counsel in it), in which that very question arose before Mr. Justice O'Hagan.

1795. That is not reported, is it?—No.

1796. Do you think that in mere family transactions, all these provisions of the free sale clause ought to apply, that is to say, that a father settling his son or daughter for life, the landlord should, upon that marriage transaction, have the right to pre-empt the holding?—Well, of course, the words in the first section are: that the tenant may sell. Of course a transaction of that kind in popular estimation can hardly be called a sale.

1797. Does it not amount practically to an assignment of the holding?—Yes.

1798. Does not the interest pass from one individual to another?—It does; but what I meant to say was, that this first section, apparently, on the reading of it, was intended to apply to sales in the open market.

1799. Is not the word "sell" defined in another portion of the Act, to mean "to alienate"?—It is.

1800. And does not a father alienate his farm, if he gives it to his son-in-law?—Yes, that is so.

1801. Therefore, does not all this free sale restriction apply to the ordinary family, and marriage, and domestic transactions, as well as to sale in the open market?—Yes; the 57th section (that is the definition section of the Act of

Mr. *T. M. Healy*—continued.

1881) defines "sale" and "sell" to "include alienation, and alienate, with or without valuable consideration."

1802. That is on page 316 of Cherry, is it?—Yes.

1803. But do not you think the free sale clause was intended, at any rate in its policy, to apply to that class of case?—Well, I should say, myself, not.

1804. But have you any doubt as a lawyer?—It, undoubtedly, does apply now.

1805. With regard to your answer to me yesterday as to a tenant having notice of the law points, you, as I understood, were of opinion that that would hardly be fair?—What I said was that very many important law points often arise during the progress of the hearing of the case, and are points of which notice could hardly be given; they arise on the evidence that is given in court.

1806. Take the great subjects of exclusion?—Yes; those questions of course are in a different position, there the parties know the point beforehand.

1807. The landlord knows in advance whether he is going to make a case of demesne land, pasture letting, residential holding, or sub-letting, does he not, as a rule?—As a rule; but sometimes in sub-letting cases the point arises during the hearing, and apparently comes to the knowledge of the parties during the hearing of the case; but the other point you mention are undoubtedly always known beforehand.

1808. Do not you think the tenant should have notice in sufficient time to enable him to have legal advice and equipment as to any points as to his status which the landlord may bring against him?—Well, I think it would be perhaps advisable, it would undoubtedly enable him to come down prepared for the case, and sometimes we now have to grant adjournments when a point of that kind arises unexpectedly, and the parties are not prepared to meet it. Of course, if notice was given beforehand that would be avoided in a great number of those cases. In cases of pasture holding or of town park, as a rule the parties expect the objection; the tenant very often suspects that it will be made, and he is prepared; but I have known cases where it has been unexpectedly sprung.

1809. Do you think it fair to a tenant that he should be ousted, temporarily even, from his fair rent by having the sub-letting point suddenly sprung upon him, throwing him out of court, putting him to get the sub lettings put an end to, and then in a year or two afterwards coming back freed from his sub-letting, and thereby being defeated for a couple of years on a mere point sprung upon him, probably without the landlord's knowledge, by the local solicitor or by counsel?—I do not see how you can guard against that altogether. Of course the right of the parties is to rely upon any law point that may appear, and if you were to shut out all right to raise a point of which notice had not been given, I can conceive cases where it might cause inconvenience.

1810. Does it not frequently happen that a solicitor for a landlord or a counsel, in his zeal for his duty, and not knowing what view his patron or principal might take, feels bound to raise the point

Mr. *T. M. Healy*—continued.

point as to sub-letting to oust the tenant, when probably, if he had an opportunity of consulting with the landlord, such a point might not be raised; do not you think it would be fairer that, say 10 days before the hearing, the landlord should be compelled to give notice of all points of law, and to rely on those only?—Well, of course, a somewhat analogous system had been adopted under appeals formerly where the parties were required to state whether the appeal was on value, or whether a question of law would arise at the hearing.

1811. The Chief Baron's decision was put upon a different ground, was it not; he said that a re-hearing was a re-hearing, and you could not prevent a re-hearing being a full re-hearing?—Quite so.

1812. But there is nothing to prevent a rule of the Land Commission stating that you shall confine your point of objection to status, to the case where you have given 10 days' or a fortnight's notice?—I cannot say how far the Chief Baron would apply the objection to the original hearing, if his ground of objection to notice in the Court of Appeal was that the parties were entitled to raise all points at that hearing, it being a re-hearing; he may also hold that at the original hearing you had no jurisdiction to shut out the parties from raising any points of law. Of course, I am not aware whether he would go to that length or not, but there certainly would be no difficulty in requiring a rule to be framed such as you refer to; but as to how far it would be held good, or *ultra vires*, I would not like to say.

1813. But in common law actions there are a number of points that you are excluded from raising unless they are pleaded, are there not?—Yes.

1814. And there would be no variation of legal custom or principle in a similar rule being applied to these land cases, would there?—I can see no objection to its being adopted, but, as I say, how far the superior courts would hold it good I would not like to say.

1815. You have stated that the decisions which have been come to are very often of a conflicting character, is not that so?—Yes.

1816. And is it not a fact that the analogy of the franchise decisions has sometimes affected the decisions in the Law Courts, in the Land Court?—I do not know about the Land Court, but in the Court of Appeal those analogies possibly would arise so as to affect decisions.

1817. In order to show the extraordinary *minutiae* on which the Court of Appeal works at times, will you tell us whether there was not a recent case in which the question of a man who was confined in a lunatic asylum outside the town where he lived as a town park holder, did not affect the view of the Court of Appeal. First let me ask you. Had the Court of Appeal decided in a franchise case that detention in a lunatic asylum during the qualifying period prevented a man occupying the qualifying premises, even although they were inhabited by his wife and child, and he had paid his rent and rates. That decision had been come to under the Franchise Law, had it not?—Yes.

Mr. *T. M. Healy*—continued.

1818. Will you tell us whether that has been held by the Court of Appeal to affect town parks?—There was a case recently in the Court of Appeal, a Newcastle, county Down, case, Martin *v.* Lord Annesley, where the question raised before me was whether the tenant was living in the town at the date of the passing of the Act of 1881, which was the crucial moment in accordance with the decision in Nelson *v.* Headford. It appeared that some years before 1881 the tenant, Martin, had got into some difficulties with regard to the administration of an estate, and the Vice-Chancellor had ordered him to be committed to Downpatrick Goal. He was not long there when he was transferred to the Downpatrick Lunatic Asylum, and he was an inmate of the Downpatrick Lunatic Asylum on the 21st or 22nd August 1881, the date of the passing of the Land Act. I held, under those circumstances, that on that date he was not living in Newcastle.

Mr. *W. Kenny.*

1819. Is this in Cherry?—No; it is decided within the last month or two. I held that he could not be held to be residing in Newcastle, as he was actually, as I say, in the gaol of Downpatrick for some years.

Mr. *T. M. Healy.*

1820. That is to say, that as he would not have residence for the purpose of the franchise, he would not have residence for the purpose of the Land Acts?—Just so. Mr. Justice Bewley upheld that decision, and the Court of Appeal have had it argued at great length before them lately, and they have practically upheld it; but they have held over their judgment in order that further inquiry may be made, or that further evidence should be given with regard to who was in occupation of his house, what was the *animus revertendi*, and other things.

1821. Whether there was a constructive residence on the 21st August 1881?—Quite so.

1822. And that important point remains now for solution?—So I believe; but as the decision is not reported I would not like to make any absolute statement as to what they did decide.

1823. But do you think it may be taken to be a specimen of the closeness of legal inquiry with which the Land Acts are examined?—Oh, yes.

1824. Now, I wish to ask you a question about fines; has it not been held in two cases, Bolton *v.* Barry and Wilson *v.* Smyth, that where a man pays a fine as security at the beginning of his lease to be returned by the landlord at the end of his lease, if the lease is broken—under the Act of 1887—the tenant practically can never get back the fine (caution money, I suppose it would be better to call it) which he originally paid?—Yes; that was decided in Bolton *v.* Barry, which is reported in 12 Law Reports, Ireland.

1825. And since then in Wilson *v.* Smyth, which is reported in 23 "Irish Law Times" Reports?—Yes.

1826. Is that in Cherry?—Yes, that is in Cherry; it is on page 282 of Cherry.

Mr. *T. M. Healy* —continued.

1827. The landlord, as I understand, is allowed to retain the money which he was to have given back at the end of the lease, because the lease now being converted into a statutory term may, in the contemplation of the law, never come to anything?—Yes; it was held in that case by the Court of Common Pleas that this payment was a condition applicable to the tenancy from year to year, and that the landlord was entitled to retain the money under the same conditions as he had held it under the lease.

1828. Would you in fixing a fair rent under the Acts be able to take into account a payment of money which simply was lent to the landlord by way of security?—That was simply lent by way of security.

1829. Take the case of Wilson *v.* Smyth, in which 125*l.* was lodged with the landlord to be given back by the landlord to the tenant at the expiration of the lease: held by the court that it was not to be given back?—We could not take that into account under the decisions now.

1830. In some of these cases, as we know, that caution money has amounted to as large a sum as 500*l.*, has it not?—Yes.

1831. That is not a sum you can take into account, although the landlord may pocket it for ever?—No; it was held in Bolton *v.* Barry that it could not be taken into account in that case.

1832. Have you had before you the case of any leases made subsequent to the passing of the Act of 1888, where there was a covenant that although the tenant was a future tenant, yet if any Land Act dealing with the case was subsequently passed, he should have the right to go into court. I take the case of McCarthy *v.* Bennett, a county Cork case, in which there was the following covenant: First, the lease provides that the tenant is to be a future tenant, therefore excluded from the Act, but it gives him this additional provision: "That in the event of any Act of Parliament being passed whereby the tenants holding under lease heretofore made shall have extended to them the benefits of the Land Law Ireland Act, 1881, or any other Act to be passed dealing with the relationship of landlord and tenant in Ireland where tenants hold under lease it is agreed that the said Felix McCarthy, his executors, administrators, or assigns shall in respect of those lands and the tenancy hereby created be entitled to the benefit of any Act so to be passed." Are you aware that the Chief Commission (a rent having been fixed in such a case by a Sub-Commission Court) held that notwithstanding the covenant, the tenant was not entitled to have a fair rent fixed?—Yes, I believe that is so; but I am not personally aware of that case.

1833. And has the Court of Appeal held, also, that where the tenant has contracted not to take the benefit of any future Act (as in Fergusson *v.* Broadstreet), the tenant is not to get the benefit?—They held that a contract not to take advantage of future legislation was valid where the tenant was within the exemption from disability to contract under the 22nd section.

Mr. *T. M. Healy*—continued.

1834. So that they have decided that whether the landlord says that you may take the benefit of future legislation, or whether the tenant says that he will not take the benefit of future legislation, in either case you can never get the benefit of the Land Act?—From those cases that would appear to be so.

1835. So that now, except in the case of the fortunate persons and their descendants who may have been equipped and clad with the position of the present tenancies at a given date, which number must always be a diminishing number, there is no means of getting within the charmed circle of benefit under the Land Act?—Yes, that, I think, is so; in fact, the present tenancies are stereotyped to those in existence at the passing of the Land Act of 1881.

1836. And from death and other causes, that must always be a diminishing quantity?—Of course they are liable to be destroyed in various ways, and once destroyed you cannot set them up again.

1837. You stated at your original hearing that you thought the present system of fixing rents was as fair a system as could be devised?—Yes. I was referring, of course, to my own tribunal, for which I can speak with authority. I do not like to deal with any other.

1838. Now, your own tribunal, however, is liable to be reversed in its view, is it not?—Oh, yes.

1839. You have fixed rents largely in the county of Cavan?—Yes, I have been fixing rents in Cavan for a long time.

1840. But your decisions are subject to appeal on value to the Chief Commissioners?—Oh, yes.

1841. The Chief Commissioners, in fixing the rent, never see the farm?—No.

1842. And the House of Lords has strongly condemned the method which they adopt of fixing appeal rents by valuers, has it not?—I was not aware of that.

1843. Paragraph 26 of the 1883 report of the House of Lords states this: "The official valuer, when he goes upon the land, necessarily finds himself in want of information with regard to the boundaries, the circumstances of the farm, the improvements that have been made, and the time when, and persons by whom, they have been made. The valuation at which he arrives must be more or less dependent on these and similar considerations, but upon all such matters his information must be derived from statements made to him on the land, often upon hearsay, and always without the security or check of oath or cross-examination. And it must be often impossible for the Commissioners to discriminate between his conclusions, arrived at from occular inspection, and those arrived at from statements made to him." That is the view of the House of Lords. The report is drawn up; it is found by Lord Cairns himself; he was the person appointed by the Lords to make this report. Now, I wish to ask you with regard to these appeals in cases like Cavan, whether the Chief Commission rely on valuers still?—Yes. I think the present system is to send down two appeal valuers, who inspect the holding, having those books and those reports that

Mr. *T. M. Healy*—continued.

that Mr. Fitzgerald produced, and they make a report which is before the head Commission when they go down there, and apparently they fix their rents mainly upon those reports.

1844. We had a case asked about recently in the House by Mr. Knox, the Member for Cavan, with regard to certain Cavan rents fixed on appeal by appeal valuers, pointing (and it was not denied, as I understand, in reply) to the fact that one of these appeal valuers was a person himself largely connected with the landlords of the county of Cavan. Could you tell us, if you please, whether this gentleman was one of the gentlemen who revised the rents that your tribunal (which you state is a fair tribunal) fixed?—I take it that you refer to the appeal valuers who have gone over our cases, namely, Mr. Bomford and Mr. Callan.

1845. Mr. Bomford was the gentleman pointed to in Mr. Knox's question as being a person connected with the landlords in the county of Cavan, whose rents he had to revise. Does it come to this: A Sub-Commission having gone on the land and heard the evidence is subject to having its rents ransacked and overhauled by two valuers sent down by the Chief Commission without hearing any of the evidence?—Of course the Chief Commission also take evidence in court; but they have the report of those two gentlemen, and I take it that they pay very considerable attention to those reports in altering our rents.

1846. There is a description given of the qualifications of valuers and Sub-Commissioners in a report given to Parliament—a Parliamentary return: Mr. John Bomford "acted as judge of crops, drainage, buildings, &c., for Royal Agricultural Society for many years; experience of extensive drainage works as land agent; studied military engineering; valued farms and improvements under Act of 1870; awarded premiums for maps, plans, and estimates by Royal Agricultural Society." He is described in his previous profession as a "grazier, farmer, land agent, and land valuer, Poor Law Guardian, and Justice of the Peace," and as residing in Meath. It does not say anywhere that he was connected with the county of Cavan. What is the name of the other gentleman?—Mr. Callan.

1847. Philip Callan, County Louth. "Examination, for a syndicate, of over 1,000,000 acres in South Brazil, and inquiry into system of agriculture there. Was taught mapping and surveying at college; valued land and scaled maps since appointment." The description of his "previous profession" is "farmer and grazier," and the counties in which his "practical experience of land was acquired" were Louth, Cork, Meath, Sligo, Dublin, Donegal. It was admitted, I think, by the Chief Secretary in his answer that Mr. Bomford had been connected with the landlord party in the county of Cavan?—I do not know about that.

1848. Whether he be related to the Cavan landlords or not, was the result of his operations on your rents to raise them very largely?—I have seen the results in the newspaper in the last couple of days; they have raised a great number of them.

Mr. *T. M. Healy*—continued.

1849. These rents were largely raised, were they?—Yes, at the last sitting in Cavan they raised a good number of rents.

1850. Were the rents considerably raised?—I did not take the percentage. I could give you a list of them; but I really could not say the amounts.

1851. I think it is fair to Mr. Bomford to ask whether he is not compelled by a document which he and the other gentlemen are obliged to sign consequent on the passing of Mr. Balfour's Purchase Act, to go to any county whither he might be despatched by the Land Commission; that he has no choice in the matter?—Oh, yes; any member of the staff of Assistant Commissioners may be obliged to go to any district. Of course, if he states any ground which the Chief Commission would consider one that should cause him not to be sent to that district, I take it the Chief Commission would not send him there.

1852. On the passing of Mr. Balfour's Act, which gave the valuers and Assistant Commissioners a permanent status as civil servants of the Crown, you were all compelled, as I understand, to sign an undertaking to go to any county to which you might be despatched?—Oh, yes.

1853. So far as Mr. Bomford was concerned, we may take it he was not a free agent?—He was, of course, sent by the Chief Commission.

1854. Is there any gentleman in the Chief Commission who is specially responsible for the *personnel* of this Land Valuing Court?—Yes, Mr. Fitzgerald.

1855. Now, let me ask you one or two other questions: Mr. Fitzgerald stated also, as I understand, that the valuation is considered no longer of any value as a guide by himself and his brother Commissioners?—Yes.

1856. Can you explain to me in that case why, in every form that the Land Commission issue, they compel the tenant to state the valuation of his holding?—I think, with regard to that, in the early years of the Land Commission, the valuation (that is, the Government valuation) was looked upon as having a certain value as showing what the rents should be; now it is not looked upon as of any value for that purpose; but it is still required to be shown, as, in many cases, the question of the incidence of taxation will depend upon the Poor Law valuation; and the rule with regard to improvements being endorsed on the notice also depends upon the valuation, and for these purposes it is still required to be stated.

1857. The sub-letting exclusions, as I understand, operate more largely in Ulster than anywhere else?—That is my experience.

1858. That is owing, is it not, to the fact that Ulster is so largely in tillage?—Yes; and owing to the number of small industries or mills scattered about it. Of course there are a large number of houses built for the workers in those mills.

1859. Has your attention been called to the decision recently given in connection with the estate of Mr. Villiers Stuart in the county of Waterford?—I have only seen the newspaper report of it; I have no other knowledge. I

Mr. *T. M. Healy*—continued.

have seen a report of the judgment given in the newspapers.

1860. Rents which were originally 6*d.* have been made 4*l.*?—So I saw.

1861. And that on mountains on which the landlord had not expended one penny; is that in consequence of Adams *v.* Dunseath?—Yes; it would appear that the decision, as far as I can understand, was given on the final paragraph of the 4th section of the Act of 1870, which is imported by Adams *v.* Dunseath, that is the question of the length of enjoyment.

1862. The enjoyment of living on the top of a mountain for 50 years was held to entitle the landlord to the difference in rent between 6*d.* and 4*l.*, and with the labour of working the mountain thrown in. Is not that the law in Ireland?—Well of course——

Chairman.

1863. Were you in that case?—No, I was not; I only saw the report in the newspapers.

Mr. *T. M. Healy.*

1864. But that is the law, is it not?—Apparently in that case it was so held.

Mr. *T. W. Russell.*

1865. What court was it in?—It was before the Chief Commission.

Mr. *T. M. Healy.*

1866. By asking you for the file of that case of Mr. Villiers Stuart, in which Mr. Murrough O'Brien dissented, I conclude. You will furnish that?—Certainly.

Mr. *Clancy.*

1867. In reference to that case of Mr. Villiers Stuart, where rent was raised from 6*d.* an acre to 4*l.* I suppose that was done on the principle of giving increased letting value wholly to the landlord, increased letting value resulting from the improvements of the tenant?—So I would say; but really with regard to that case, I do not know the reasoning on which it was decided, as I have not read the judgments, except cursorily in the newspapers.

1868. Suppose any case in which rent was raised from 6*d.* an acre to 4*l.* an acre by reason of improvements made by the tenants, of course it is done on the principle that the development of the inherent capacity of the soil, or the improvability of the soil, belongs to the landlord?—Yes.

1869. Did it ever strike you that the inherent capacity of the soil was allowed for twice over in those cases?—In what way.

1870. For instance, in taking account of original rent. Why, in your opinion, is there 6*d.* an acre charged for one sort of unreclaimed land, and say, 10*s.* an acre for another sort of unreclaimed land; would that be the allowance for the inherent capacity of the soil?—No, that would be an allowance for the value of the soil; the rent-paying capacity of the soil in its unreclaimed state.

1871. Exactly, that is what I am saying; therefore, when one class of land only brings in,

Mr. *Clancy*—continued.

in its unreclaimed state, 6*d.* an acre, and another class in its unreclaimed state brings in 10*s.* acre, there is evidently an allowance made for the quality of the soil in the one case and the other?—It is in this way; the 10*s.* land either feeds cattle or grows produce.

1872. I know, but whatever the reason be, there is an allowance made in respect of the difference in the land?—Undoubtedly.

1873. And are you not allowing for that same thing twice over, when you allow all the increased letting value to the landlord, the tenant's increase?—No, I would say not; for this reason. The 10*s.* is put on unreclaimed land, not as including the inherent capacities of the soil which might render it capable of being so improved as to make it worth 30*s.*, that is not taken into account; it is the actual amount it would produce in its unreclaimed state without taking into account any of its inherent capacities for further improvement.

1874. What is your practice in the matter?—That is, as dealing with it when reclaimed, or when unreclaimed, do you mean?

1875. Dealing with it when it is reclaimed, of course?—When it is reclaimed our practice is to allow the tenant the cost of carrying out the reclamation.

1876. I know; you have stated that. Do you ever take into account the fact of the difference in the quality of the soil in its unreclaimed state?—Of course we have to do that, in order that we may arrive at the amount.

1877. If you do, do not you make the allowance in respect of improvements which had already been made in the original rent charged to the tenant?—Well, I would not think so, for we begin by estimating what the value of the land is in its unimproved state; we then estimate the value of the land in its improved state; we then have the difference between the one value and the other value; and how that is to be allocated is the next consideration, and at present it is allocated by allowing the tenant a percentage on the cost of the reclamation and the rest to the landlord.

1878. Then it seems to me you do not go into the question of the quality of the soil in its unreclaimed state; you simply take account of the effect of the reclamation?—Yes; but, of course, some land is worth more in its unreclaimed state than other land; we have to take that into account.

1879. I want to ask you a question about these land improvement charges, and what you do with them when you have to come to fix a fair rent. Say the landlord borrows a certain amount of money for purposes of drainage, and he borrows it from the Board of Works on the terms of repaying it by instalments spread over a certain number of years, to cover principal and interest; in a case of that sort, in which the landlord puts an addition to the rent equivalent to the charge which he has to pay to the Board of Works, what do you do with that charge when you come to fix a fair rent?—If the reclamation or improvement has been carried out by the money borrowed from the Board of Works and repaid

by

Mr. *Clancy*—continued.

by the landlord to that extent, it is looked upon as a landlord's improvement.

1880. But I am talking of the case where it is repaid by a tenant in addition to his rent?—Of course in that case we would not look upon it as a landlord's improvement.

1881. Supposing that the landlord continued an addition to the rent after the period for paying the instalments had elapsed, that is to say, after all the loan had been repaid, what would you do with that increase in the rent?—Of course, we would consider the improvements as to whether their influence and effect were still subsisting or not. If they expired with the period of repayment, then of course the matter would be at an end and concluded.

1882. I mean to whose credit would you put them?—In that case, where the tenant repays the amount of the loan, of course they would be tenant's improvements and we would put them to the credit of the tenant.

1883. That is to say, in the first place, before you would begin to fix the fair rent you would strike off the addition put on by the landlord?—No; we would not measure it in that way; we would not measure it by the actual amount that was expended unless that was synonymous with the increase in value resulting from the spending.

1884. It does not follow that in fact you would not strike off the addition made to the rent, although the money had been repaid by the tenant, and although the landlord had never spent a penny, as it were?—In effect, it might come to that, but that is not the way we would proceed about it.

1885. That would be the practical effect, would it not?—Yes.

1886. What "reclamation" is there on buildings, the only permanent improvements for which you allow in most cases?—"Reclamations." Of course, in cases where the improvements were made more than 20 years they are the only improvements practically allowed.

1887. What is "reclamation" exactly?—"Reclamation of waste lands" is the term used, that is, the lands before the work begins, must have been what are called waste, that is to say, they must not have been previously tilled or previously brought into cultivation.

1888. Not at all?—Not at all.

1889. So that if you had land that had been, however slightly, cultivated, but which still was practically waste, you would not give credit to the tenant for reclaiming that land?—That would be a matter of fact, and if the court came to the conclusion that the work done by the tenant was really reclamation, although there might have been some slight attempt to till it previously, we would allow it as reclamation.

1890. Suppose that a field is full of boulders and rocks, and a good deal of reclamation has been done in the shape of removing those stones, would you allow for a case like that as one of reclamation?—Oh yes, the removal of rocks which rendered the land impossible of tillage.

1891. I mean in regard to land previously tilled, because you said land previously tilled, you would not consider it reclaimed, no matter what was done?—What I meant to convey was, that

Mr. *Clancy*—continued.

a case such as you put is a question of fact, which we would have to consider in coming to a conclusion as to whether it really amounted to reclamation of waste land; we do not adopt any hard and fast rule.

1892. You would not be at all certain that a tenant would get credit for such a case of reclamation?—No.

1893. And as a matter of fact, are not most claims for reclamation disregarded on that very ground?—Not in my experience. The claims for reclamation which I most largely meet are cases of reclamation of mountain holdings or bog-holdings, cut away bog, or mountains.

1894. There is no case of reclamation of any other sort, is there?—There are others; but I say those are the class of cases I most commonly meet with. In some districts we have a very large number of cases where the reclamation claimed has been that of removing rocks.

1895. Is it not quite as possible that the tenant may have expended money on removing stones, building fences, and that sort of thing, on land that had been previously tilled, as in reclaiming a piece of waste that had never been tilled before, and yet never allowed a penny for it?—We would allow him such an improvement if it were not excluded by the 20 years rule.

1896. Is not that possible?—Oh, it is quite possible.

1897. I am not sure that I understood the substance of your evidence in reply to Mr. Healy on the subject of what will happen when the statutory term expires and cases come up to be heard again. Do you hold that there will be a rehearing?—Oh, yes; there must be a rehearing.

1898. And that the question on that rehearing will not be one confined merely to revision of the rent?—No, the question must be gone into as to the improvements that are to be allowed in the second statutory term.

1899. Do you mean to say, that every question that has been decided with reference to the law in regard to the particular holding will all be open for argument again?—I do not say every question.

1900. I mean with regard to points which have not been decided by the Court of Appeal. Suppose the holding is decided, by the fact of fixing a fair rent, to be within the Act of 1881 or 1887; will you be entitled to exclude it by a fresh point of law?—That is a matter that I cannot answer generally; it depends on the nature of the point of law. It is quite possible, as I stated in answer to Mr. Healy, that points may be raised that would exclude tenancies on which fair rents had been already fixed.

1901. That is rather an alarming prospect, that you may have to rehear every point?—Have to rehear a great number of them. I do not say every point; some points probably have been finally concluded by the previous hearing.

1902. At any rate, there is no doubt about this, that in regard to points on which the decisions of the courts have altered from what they were in the beginning, in reference to all these points the landlords may, if they like, have the whole case reopened?—There is no doubt about that possibility, but I would not like to make a general answer to that, because it is a

Mr. *Clancy*—continued.

really a serious question of law as to how far these various points of law will be reopened on the rehearing.

1903. Now, as to sub-letting. The law was altered by the 4th section, I think, of the Act of 1887, with regard to sub-letting, was it not?—Yes.

1904. And after that Act, a person was not excluded who had sub-let for the purpose of labourers' cottages?—That is so.

1905. But that law does not apply to anything that happens after the Act of 1887?—No, or after the Act of 1881.

1906. Was it 1881 or 1887, which?—It was after the Act of 1887, but, of course, no letting could be made after the Act of 1881 without the consent of the landlord.

1907. Therefore in regard to the future that exception still prevails, does it not?—Yes; but with regard to future sub-lettings the law as affected by the 4th section of the Act of 1887 does not apply.

1908. Therefore, if at the present moment a tenant lets a piece of his farm for the purpose of a labourer's cottage, and he requires that labourer for his work he will be excluded from all Land Acts?—That is if the letting was made after the passing of the Act of 1887.

1909. I say, now, henceforth?—Yes, unless the consent of the landlord is obtained.

1910. But must not that consent be expressed?—It must.

1911. Mere acquiescence would not do?—No.

1912. Am I right in saying that if a tenant takes a holding subject to tenancies he is excluded from the Land Acts?—Yes.

1913. And therefore if a man finds on a holding which he has taken, which he may take now, for instance, two or three sub-tenants in the shape of labourers whom he requires for the cultivation of his holding, he could never apply to have a fair rent fixed?—That, of course, depends upon when he took the holding, and the circumstances. If he took the holding before the passing of the Land Acts, a portion of which was sub-let to labourers, as you say; in that case, of course, the principle in Flannery *v.* Nolan would apply.

1914. But with regard to the future?—Well, of course, you can hardly have such a case in future; it would be a future tenancy if he takes it in such a way.

1915. I am talking of the tenant who has been in since the Act of 1881 was passed, and who now sublets a part of his holding to a labourer and builds a house upon that part for a labourer whom he wants for the cultivation of his farm. He is prevented practically from doing that by the threat of being excluded from the Land Act, is he not?—Yes, because he cannot, without the consent of the landlord in writing, make a sub-letting since the passing of the Act of 1887.

1916. With regard to appeals, or questions to be decided either at the original hearing or on appeal, you said, I think, in reply to Mr. Healy, that you approve of the principle of the landlord giving notice of the point he would rely upon?—What I said was, that I saw certain difficulties in the way of that procedure, but I did not see that they were insuperable.

1917. Is it not a fact that at present, in the case of civil bill appeals, no appellant, whether to the Lord Chancellor or to the Judge of Assize, is allowed to rely upon any point except those stated in the notice of appeal?—Yes.

1918. Would not that be a very salutary rule to apply to the Land Courts?—It is quite possible to apply that rule, and it may prove a very useful one.

1919. No injustice, in your opinion, would result?—Well, at present I cannot see in the majority of cases that it would; there may be cases in which injustice would result.

1920. Under the 5th sub-section of the 58th section of the Act of 1881: "Any holding which the tenant holds by reason of his being a hired labourer or hired servant" is excluded from the Act?—Yes.

1921. But I believe the mere payment of rent by labour does not exclude the tenant from the benefit of the Act?—No.

1922. Nevertheless, has your attention been drawn to the case of Hansher *v.* Chichester, "where a tenant took lands at 11*l.* a year under a written agreement, by which he was to provide the labour of one adult male for at least 45 days in each quarter at 1*s.* a day, it was held by the Court of Appeal, reversing the decision of the Land Commission, that he occupied the holding as a hired labourer, and was, therefore, excluded from the Act"; perhaps you decided that case yourself?—No; that was decided in the very early days of the Land Commission, the first year.

1923. Was the appeal decided in the early days?—Yes, it was.

1924. That is the law still?—Yes; I do not know of any change in the law.

Mr. *W. Kenny.*

1925. I think you said that the originating notice, which is served on behalf of the tenant for the purpose of getting a fair rent fixed, contained a schedule of the improvements he had made?—Yes.

1926. That is the invariable rule, is it?—Except where the valuation is under 10*l.*

1927. Now, in your experience do you find that the tenant proves the improvements which he alleges in his originating notice, or do you find that there is occasionally very gross exaggeration in the statement of the improvements?—In my experience I find that the endorsement on the originating notice in very many cases is extremely untrustworthy; in many cases the tenant does not prove at all so many; in others, he proves a great deal more. In fact, as I think I stated yesterday, I find the usual course is this: that when the tenant comes in to have his notice prepared he has not measured his improvements, and he has not estimated those that he can prove: to a certain extent he makes a guess at what he thinks he may prove, and that guess is entered on the back of the notice.

1928. But do you find that he claims for a class of improvements which he is not able to substantiate at all; does that arise in many cases?

Mr. *W. Kenny*—continued.

cases?—The classes of improvements that he claims for usually are reclamation, drains, fences, and buildings; of course in the last case only where he thinks he must prove them; these are the main classes of improvements that are claimed.

1929. But what I want to know is this: Do you find claims in respect of draining, fencing, tillages, and manures made by the originating notice, which are not afterwards borne out in evidence at all?—Very frequently.

1930. Is the proportion of cases in which their improvements are not allowed at all a large one?—In which the improvements are not allowed?

1931. In which the improvements are not allowed—I mean in which you find no improvement?—Well, I would hardly like to say what the proportion is, for when we say that we find no improvements, of course that means that we find no improvements that can legally be allowed, as far as I am concerned. The lay Commissioners, of course, in their report must state the improvements that they find to exist on the holding, and that are proved in court.

1932. I think you said that fair rents had been fixed in 294,000 cases. I think you said that in reply to Mr. Leese?—Yes.

1933. Would it be possible to give us the number of cases in which no claim for improvements was made by the tenant?—Well, it would be a tremendous task; you would have to go through the entire number of the 294,000.

1934. I mean, is there no record kept of them?—Not that I am aware of; no.

1935. Can you tell us of your own experience, is there a large class of cases in which the tenant is unable to specify any improvements as having been made by him?—In my experience, in the great majority of cases, some claim is made.

1936. And do you go the length of saying that in the great majority of cases, these claims that you call "some claims" are disallowed?—Oh no, I would not.

1937. Can you give us any proportion at all of the number of cases in which claims are disallowed, and the number in which claims are allowed?—No, I could not; I could not give any idea. As the matter varies so exceedingly, it would be but the veriest guess to attempt to state it with any approach to accuracy.

Chairman.

1938. You have no impression on your own mind?—Well, I have the impression that in the majority of cases the tenant makes some claim for improvements, and in the majority of those cases, unless they are ruled out by one of the legal exceptions, there is something, either a few drains, a few perches of fencing, or something, allowed.

Mr. *Sexton.*

1939. When you altogether disallow the claim of the tenant to be exempted from rent in respect of improvements, can you state whether your impression is that the disallowance is usually due to a matter of fact in regard to the proprietorship, the making of the improvements, or to legal exclusion under the statutes or judgments?—I think that the most common ground of disallowance is that they were made more than 20 years, say, before the claim; that is the commonest ground of disallowance.

Mr. *W. Kenny.*

1940. That is the commonest ground of disallowance?—Yes.

1941. That would scarcely be a common ground?—Not at all to the same extent.

1942. A tenant now making a claim will be able to claim for any improvements made since 1870?—Yes.

1943. That is to say, any improvements made by him within the last 24 years?—Quite so. Of course since the passing of the Act of 1881 every year is adding to the number of years that he can claim for.

1944. Now one of the exceptions is that in a lease for 31 years the tenant cannot claim for improvements, unless for permanent buildings and reclamation of waste lands; is that not so?—Yes.

1945. What other improvements did the tenants usually claim for except permanent buildings and reclamation of waste lands?—The others are, as a rule, drainage, fencing, and farm roads; those practically comprise the classes of improvements; tillages and manures may of course be added.

1946. Drainage, fencing, and farm roads?—Yes.

1947. Do you find that the amount of improvements that are claimed in northern tenancies is very much greater than those claimed in southern and western tenancies; take Ulster and Munster, is the claim for improvements very much less in the province of Munster than it is in the province of Ulster?—It is a great number of years now since I worked in the province of Munster, and I would not like to speak with reference to it. I have been almost invariably in Ulster for the last four or five years.

1948. When you were in Munster, did you find that there was a small proportion of improvements by the tenants proved there in your recollection?—My recollection of Kerry, where I worked for some time, is that there was a great deal of claim for mountain reclamation and that kind of thing, and a good deal of claim for fencing and draining.

1949. In these cases, where there had been a reclamation of mountain land and so on, did you find that the tenant had at any time since the making of the improvements held at a very low rent?—In Munster you mean?

1950. Yes, in Munster?—As I say, it is about five or six years now since I fixed any rents there, and I could hardly give you any information as to that.

1951. Can you from your recollection say whether you found as a general rule that the lettings were made at low rents, where the improvements were made by the tenants, although they may have been raised afterwards?—I do remember cases undoubtedly in some of the mountainous districts where the rent was at a very low rate originally, and in fact cases similar to those which have been referred to here, Mr.

Mr. *W. Kenny*—continued.

Villiers Stuart's cases, where the original rent had been very low.

1952. And had been very low for a number of years probably?—Yes, the rise I would say as a rule took place from 1860 on.

Chairman.

1953. On to what?—On to 1875.

Mr. *W. Kenny.*

1954. Now take Mr. Villiers Stuart's case which has been referred to as a test; in the case of the reclamation of the mountain lands or the waste lands there, were not the improvements made about the year 1826?—I do not know the dates in that case.

1955. Do you remember whether there was not a lease at 1*s.* or 6*d.* an acre in the year 1826. Perhaps you do not know the case?—No, I merely glanced at the report in the newspaper, so I do not know the facts of that case.

1956. In these cases would you consider that the tenant had been compensated for his expenditure by having enjoyed the holding, at a low rent for a great number of years with these improvements on it which he had made?—Well, of course that is a question which depends on such an enormous number of circumstances; you have to consider the original cost of making the reclamation; you have to consider the length of time it took him to make the reclamation; you have to consider the length of time that he enjoyed the holding at the original low rent, keeping up the improvements; you have to take such a lot of circumstances into account that I would hardly like to answer that as a general question. You must take the particular case, and think it out.

1957. I should like to ask you something more on Mr. Villiers Stuart's case, but you say you do not know the facts?—I only saw the report in the newspapers.

1958. Suppose improvements had been made from 1826 up to 1830, and that they had been fairly maintained from that up to 1876, would you consider it fair to apply the principle of compensation with respect to the enjoyment during that period?—I should say that that would depend upon what the "enjoyment" was, and the question of whether the land was immediately brought into a state that yielded a return.

1959. I am supposing it to be so in 1830?—That the result of the reclamation was immediately to bring it in?

1960. Yes, and that he held the holding at 6*d.* per acre per year, from 1830 to 1876?—And that the cost of keeping it in that state was trivial?

1961. Yes, trivial?—Of course, in such a case he undoubtedly had the land for that period at that low rent, and in accordance with the principles that had then been adopted, of course that would be compensation.

1962. That would be compensation; that is within Adams *v.* Dunseath?—That is within Adams *v.* Dunseath; quite so.

1963. Do you so far approve of Adams *v.* Dunseath as to consider that equitable?—Well, of course, as I say, that is more a question of policy than of law. It is a question of law now, because the law lays down that that is the rule to be adopted, but as to changing it, I prefer not to give an opinion.

Chairman.

1964. Do you know enough about the history of Villiers Stuart's case to be able to tell us whether there was a legal Sub-Commissioner there?—No, I do not; probably Mr. Doyle can tell you that, as he knows something about the case.

1965. When he comes we can ask Mr. Doyle. I do not see why he should know more than you?—It is in his district.

Mr. *W. Kenny.*

1966. With reference to draining and fencing, is it your experience that these improvements in that way would be exhausted after a certain period?—Oh, of course, all improvements will eventually become exhausted.

1967. What period of time now do you fix, on draining and fencing improvement; do you think they are exhausted after 20 years?—It is impossible to lay down a general rule with regard to draining, for example, as some drains may be exhausted in 10 years, and some may hold good for 40 years. It largely depends upon the nature of the land in which the drains are made.

1968. In the majority of the cases you have investigated, where claims have been made for draining and for fencing, do you find that the drains and the fences have been reasonably kept up by the tenant?—Of course, where we find that they are not reasonably kept up we do not allow for them; we take that into account in disallowing the amount.

1969. That is, in fact, you take an account of the deterioration of the holding?—Quite so.

1970. Do you find, in many cases, that there has been any contribution by the landlord to any of the improvements?—Oh, yes, we frequently find on some big estates that there has been a custom to allow slates and timber for example, for building the houses, and on some estates there had been a rule for allowing, we will suppose, 6*d.* a perch for drains and those kind of allowances.

1971. And where the tenant has made improvements, have you had any experience of there being remissions in rent for particular years for the purpose of compensating him for these improvements?—Yes, we have had evidence of that.

1972. Of remissions of rent?—Yes.

1973. I do not refer to permanent reduction?—That is to say, half a year's rent would be allowed to the tenant.

1974. For his improvement, as a sort of satisfaction?—Yes, of course, those are all things that we take into account in each case.

1975. Do you find, as a general rule, that the landlord preserves a record of those remissions?—Yes. Of course, when he alleges those he is generally able to produce his books to show what has been done with a particular half-year's rent.

1976. Is it your experience that the books generally do contain a record of these particular remissions?

Mr. *W. Kenny*—continued.

remissions?—That is so on the big estates where those allowances are given. On the small estates, as a rule, we do not get the same evidence with regard to remissions.

1977. Do you mean to say evidence by books is placed before you?—There is no attempt to prove allowances of that kind.

1978. No attempt at all to prove them?—Not so often on small estates as on big ones.

1979. You said that you allowed the rate of interest upon the expenditure of the tenant, and that that rate of interest varies according to the conditions in each locality, I think you said, from the circumstances of the case?—I think I said according to the nature of the improvement.

1980. Do you take into consideration the length of time the improvement will last?—Yes.

1981. When you fix the rent?—Quite so. That is necessarily so, for, of course, an improvement must repay itself in a certain time, and we have to allow interest accordingly.

Mr. *Sexton.*

1982. That is to say, you allow, not interest, but a percentage to repay the principal?—Quite so.

Mr. *W. Kenny.*

1983. Now I want to understand the exact system you pursue in valuing a farm; I do not know that all the members of the Committee quite understand it; you hear the case first with your two, say, Sub-Commissioners?—Yes.

1984. You hear the originating notice and you hear the evidence *pro* and *con* in reference to the improvements, and with reference to the status of the tenants?—Quite so.

1985. Then the two lay Commissioners go out and value the farm?—Yes.

1986. When they go out to value the farm, do they value, in the first instance, the holding as its stands, with the improvements upon it, improvements and all?—That is so; they value it with the improvements that add to the letting value of the soil. You must make a distinction between improvements that actually affect the character of the soil, and the improvements that do not directly affect the character of the soil.

1987. But with the improvements that add to the letting value, they value the holding as entire in the first instance?—Yes, quite so.

1988. And having valued the holding, as an entire holding, do they then make a deduction, according to the directions you have given to them, with reference to the making of improvements?—Yes; they add or deduct according as the improvements may be the property of the landlord, or of the tenant.

1989. Then, if they differ, they make separate reports?—Quite so.

1990. And, as I understand, you and the two lay Commissioners consult together, if there is any difference between them?—Yes.

1991. Do you decide as between the two?—We, as a rule, try to come to some amicable understanding between us. If, of course, I have a strong view that the rent should approximate one way more than the other I give expression to it.

Mr. *W. Kenny*—continued.

1992. What is your experience as to the general causes of deterioration? Is there deterioration from over-cropping?—Of course there are various reasons. Sometimes it does arise from over-meadowing on some holdings, and the deterioriation may arise from want of looking after and keeping up the drains in proper condition, and a variety of reasons.

1993. And of course the same applies to the fences?—That same applies to the fences.

1994. Does the same apply to under-manuring?—That is, no manuring at all, or practically, not enough of manuring?

1995. Not adequate manuring?—Of course there are cases in which, if you have meadow lands, you must manure them in order to keep them in proper condition.

1996. Then, as I understand, you estimate the amount of deterioration in money's worth, and do you add it to the rent?—We add it to the rent, of course, in that case; that is to say, we value the land on what its natural state *should be.*

1997. That is, the state in which it *ought* to be?—The state in which it ought to be. If there is clear evidence that the land has been deteriorated, in that case we do not give the party the advantage of his deterioration.

1998. But you do not value the land, as I understand, in its deteriorated state?—No.

1999. But in the state in which it ought to be?—Quite so.

2000. Having regard to the character of the land itself?—Yes.

2001. Then you add to the rent in money's worth the amount of the deterioration, and you arrive at a conclusion as to the rent of the tenant?—In valuing the land as it ought to be, which is the same way as if the tenant had improved his holding to such an extent that it was of greater value than it would be in its natural state, you give him the credit or otherwise.

2002. With reference to the 5th section and the presumption, the *primâ facie* presumption is in favour of the tenant, is it not?—Yes.

2003. I think you said there was no such presumption in connection with the Ulster custom?—The presumption there is, in all cases, in favour of the tenant.

2004. Absolutely in favour of the tenant?—Absolutely in favour of the tenant.

2005. Then, as regards the presumption, in the excepted cases under the Act there is no presumption one way or the other?—Where the legal presumption in the fifth section fails, where it is excluded, there is no presumption, and, of course, when there is no presumption, it is in favour of the landlord, because the tenant has to establish his claim to get the allowance on his improvements. If he does not prove the improvements, they are valued with the holding, and consequently the landlord gets the benefit.

2006. Why do you say it is in favour of the landlord; is it not a simple question of evidence as to who made the improvements?—Of course, if there is evidence, then the question of presumption does not arise.

2007. Where there is no presumption at all, is it not a question then as to who made the improvements,

Mr. *W. Kenny*—continued.

provements, whether made by the tenant or whether made by the landlord?—To take a specific case, if the question is one as to who is the owner of a particular house or improvement, the presumption is in favour of the tenant. The landlord, we will suppose, says: "This improvement was made before 1850," or "it was made under a lease," or "I bring it within one of the exceptions to the presumption." Then if this is done the presumption ceases, and it lies upon the tenant to prove it; and if he fails to prove it, it goes to the landlord.

2008. I want to see exactly what is your experience and practice with regard to that. In cases of that sort, coming within the exception, you say to the tenant, "Now you must prove that the improvement is yours"?—Quite so.

2009. Is that the invariable rule on all the Sub-Commissions?—That is undoubtedly the rule of law. That is the rule without question.

2010. You take evidence, of course, on both sides, then?—Yes.

2011. From both tenant and landlord?—Yes. If the tenant gives evidence to prove that it is his improvement, and that evidence is not displaced by the landlord's evidence, it goes to the tenant.

2012. I want to see what the onus exactly is. Do you decide against the tenant if he does not produce evidence, in the first instance; I mean, in the excepted cases?—In the excepted cases the onus is on the tenant of proving his improvement; and if he fails to give direct evidence that he has made or owns the improvement, then the improvement is credited to the holding as the property of the landlord; that is to say, rent is placed upon it.

Chairman.

2013. Is the fact that the landlord does not show from his books that he made this or that improvement supposed to set up any presumption against him. I mean this: I take it as a rule of course, the landlord records, more or less perfectly, his improvements, in account-books, does he not?—Yes.

2014. Supposing that he has no book to produce to verify his claim to improvement, does that set up against him any presumption in favour of the tenant in your view?—If the landland claims an improvement, and says he has contributed to it, or has made it, in that case, he offers invariably some evidence of the fact either by the production of documents or by the production of witnesses who can prove it.

2015. My question is this (we will take the case of a tenant): the tenant does not bring what you regard as satisfactory evidence that he or his father has made the improvement?—Yes.

2016. Do you count, as supporting that, as a presumption in favour of the landlord, the fact that the landlord cannot bring any verifying proof that he made the improvement?—No; in that case the fact that a tenant has failed to prove it, the onus being on him, is sufficient to give it to the landlord without any absolute affirmative evidence.

Chairman—continued.

2017. You do not regard it as establishing any presumption against the landlord that he does not verify?—Oh, no; for it is not necessary that the landlord should have made the improvement at all; it becomes his if the tenant cannot prove it.

Mr. *W. Kenny.*

2018. What is your experience with reference to the production of the landlord's books containing records of improvements. Do you find that the landlord invariably does keep records of improvements made by him?—Of course I speak of the big estates, the large estates. My experience is that they carefully keep books in which the agents and officials of the office enter the fact that they have allowed so much for improvements, or that they have expended so much in making improvements.

2019. Could you give us the names of a few of those large estates where records are kept?—Well, I have known evidence of that kind to be given on the Shirley Estate in Monaghan, on the Rossmore Estate, I think, in Monaghan, and a variety of those large estates where books are kept.

2020. When you come to deal with the smaller estates, do you find that there is a difficulty of production of any records by the landlord of improvements made by him?—In some cases you do find those books, but not often.

2021. Not often?—Not often.

2022. So that in the case of the smaller estates the landlord would be at quite as great a disadvantage as the tenant with reference to the keeping of records of improvements?—On those estates on which books are not kept, of course, he would be in the same position.

2023. I think you said that occurred in a great number of cases?—On the smaller estates; and, as in many other cases, I cannot make any estimate of the number of estates on which books are not properly kept.

2024. In the case of these smaller estates, do you regard it as an unfair or an unreasonable thing to have no presumption as between landlord and tenant at all, but to allow each party to give his evidence as to who made the improvements?—To have no presumption?

2025. To have no presumption, one way or the other?—It may cut unfairly in one case, or it may cut unfairly in another case; that depends upon the particular case. It is difficult to make any general statement.

2026. If neither party has got any books, why should there be any presumption in favour of one instead of the other?—Except as a matter of policy, there is no reason.

2027. You said that now the tenant is a part owner?—Yes.

2028. When you said that, of course you had in mind the Acts of 1870, 1881, and 1887?—Certainly.

2029. So that it is the Legislature who has made him a part owner?—Yes, to this extent, to take the Ulster custom cases.

2030. I am

Mr. *W. Kenny*—continued.

2030. I am not touching on the Ulster custom cases?—The Legislature has put the tenants of the West of Ireland largely into the position of the Ulster custom tenant.

2031. The Act of 1870 gave the tenant for the first time compensation for disturbance, and also for his improvements, did it not?—Yes.

2032. In the third section of the Act of 1870, there was a particular scale, was there not, in respect of which the tenant was to prove where he was disturbed in his holding by his landlord?—Yes.

2033. "In the case of holdings valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of (1) 10*l.* and under, a sum which shall in no case exceed seven years' rent, (2) above 10*l.* and not exceeding 30*l.*, a sum which shall in no case exceed five years' rent," and so on. That was altered, was it not, by the sixth section of the Act of 1881?—It was.

2034. And a greater amount of compensation was given by that section than by the Act of 1870?—That is so.

2035. Now, under the Act of 1870, the amount of compensation was not, in any case, to exceed the sum of 250*l.*?—Yes, that is so.

2036. That is under the third section where the tenant was disturbed?—Yes.

2037. Has that vanished out of the Act of 1881?—It has.

2038. So apparently there is no limit, unless it be the limit provided by the last part of the scale, when the rent is above 500*l.*, a sum not exceeding one year's rent?—Quite so.

2039. So the 500*l.* will be the limit there now?—Yes.

2040. The Act of 1881, in fact, made him practically the owner of his holding?—Yes.

2041. And he did not rest any longer upon compensation for disturbance?—No.

2042. Do you regard the effect of those two Acts; the Act of 1870 and the Act of 1881, as a transfer to a certain extent of the landlords' property to the tenant?—Well, I do not know that I could well answer that question. I could say what the law has done, but as for its being a transfer of property, it depends.

2043. I will put it in this way: you gave us some evidence as to fixing the specified value of a holding?—Yes.

2044. Supposing a tenant had got the specified value of the holding without the benefit of the Acts of 1870 and 1881, I fancy you would have fixed the value of the holding at very little indeed?—But for these Acts.

2045. Yes; but for these Acts?—Of course a tenant would have had no security.

2046. Supposing he held at a rent of 50*l.* a year, would you have given him more than a year's purchase for it?—Well, it was not worth more than a year's purchase.

2047. Now, with reference to pasture holdings: in order that a tenant of a pasture holding may come in under the Act he must reside upon the holding, or it must be used in connection with his residential farms?—Quite so.

2048. And he must be under a 50*l.* valuation?—Yes.

Mr. *W. Kenny*—continued.

2049. Do you think that these are fair limitations to place upon the right of the holder of a pasture holding to come in?—I would almost prefer not to say, in a case like that, what is fair and what is not fair. You may allege any limit; it may be unfair to exclude a man over 50*l.*, and include a man under 50*l.*; but as for the limit it is more, I would say, a matter of policy. I would hardly like to say what is fair.

2050. That is to say, you do not like to draw a hard-and-fast rule?—No; I would not like to say that in a 60*l.* rent it would be fair, and that it would be unfair in a 40*l.* case. I would prefer not to say what is fair in one is unfair in another.

2051. Do you regard the limitation of residence as a fair limitation to impose?—I do; I think the question of residence is a matter of very considerable importance.

2052. And I suppose you would not be inclined to extend the benefits of the Act to those large salesmen and graziers who make claims and do not reside on the holdings?—I would say the intention of Parliament was to exclude those large graziers; there are plenty of them in Dublin, who go down and take ten or a dozen grazing farms in Meath.

2053. You were appointed shortly after the two bad years, were you not?—I was appointed in 1887.

2054. I do not know whether you have found, in the course of your experience, that during those bad years the landlords had given abatements; I mean voluntary abatements?—Well, as a rule, evidence with regard to abatements was always excluded from our consideration. The landlords objected themselves; they said it would be unfair to take into account the fact that they had given voluntary abatements, and we, as a rule, excluded that evidence.

2055. You excluded the evidence?—Yes, as to temporary abatements.

2056. I believe Griffiths' valuation was fixed under the Act of 1852, was it not?—That was one of the Acts.

2057. The last Act, I think, 1852?—Yes, some of the work of Griffiths' valuation was carried out under the Act of 1846 in Cork and the South of Ireland.

2058. When the present valuation was made, do you know whether or not prices were very much higher or lower than they are now?—There is a scale of prices laid down in the Act of 1852, in fact in all the Valuation Acts there was a scale of prices laid down.

2059. I know you have written a paper upon the subject; but without looking at the paper, do you know whether or not prices were very much lower then than they are at the present time?—I would be inclined to say from experience of the Valuation Acts that a scale of prices is almost useless; it is impossible to fix a rent on a scale of prices.

2060. You cannot answer my question as to how much they were lower in 1852 and 1853 than they are at the present time?—The prices given in Griffiths' Schedule, in the majority of cases, were lower than the prices that are returned now.

Mr. *W. Kenny*—continued.

2061. I do not know whether you know; did Sir Richard Griffiths at any time state the price fixed in 1852. I think he said 25 per cent. lower than the letting value?—I have often seen that stated, I think it was with reference to the town land valuation that was carried out under the Act of 1836. That was a town land valuation. The tenement valuation did not commence until 1846, but there had been a previous valuation, a town land valuation, which was begun under the Act of 1826, and continued under the Act of 1836, and with reference to that valuation he did state that the valuation was 25 per cent. lower.

2062. Twenty-five per cent. below the true letting value. Was this valuation made for taxation purposes?—Yes, the town land valuation was made for the purpose of the County Cess, or Grand Jury Cess. The tenement valuation was commenced for the purposes of the Poor Rate.

2063. So that in making the valuation both the landlord and the tenant were interested in having it made as low as possible, I suppose, at the time?—Oh, yes; there were specific ways in which they had a right of appeal. The valuation was carried on by local applotters.

2064. Short leases are made by the land judges from time to time, are they not?—Yes.

2065. What is the object in giving a short term in those leases? Is it not in order that vacant possession may be given to the purchaser?—Yes.

2066. Now I wish to ask you a few questions with reference to the Redemption of Rent Act. One class of fee farm grants has been ruled out altogether by the decisions under the Redemption of Rent Act, has it not?—Yes.

2067. These, I believe, were fee farm grants where the relationship of landlord and tenant was not created at all?—Yes, quite so.

2068. The class of fee farm grant that is still within the Act of 1891 are fee farm grants that have been made in pursuance of the Renewable Leaseholds Conversion Act?—Yes; but there are also grants that have been included which were made under two other classes of Acts, such as the College Leases, made in accordance with the Trinity College Act of 1852, and the leases made in accordance with the Church Temporalities Act of 1832.

2069. Do these bear a large proportion to the others?—There are a very large number of these in the County of Armagh.

2070. In these cases the relationship of landlord and tenant of course does exist?—It does exist: at least, it has been held to exist so far.

2071. Now, in order to come within the first section of the Act, in order that a tenant may have the right of redeeming his rent, the Commissioners must be satisfied that he holds at a rent which is a full agricultural rent?—Yes.

2072. Has not that been held to be a full agricultural rent for the holding as it stands, with the improvements upon it, no matter by whom made?—I believe that has been decided by the Land Commission.

2073. I believe that has been decided?—Yes.

2074. So that, in order to come within the section, the tenant has first to establish his case with reference to the full agricultural rent?—Yes.

Mr. *W. Kenny*—continued.

2075. If he is paying anything under that he has no right to apply to redeem the rent?—Yes, that is so.

2076. Then a little further on in the section you observe that the Land Commission, regard being had to the adequacy of the security, are to allow the rent to be redeemed as if it were a head rent redeemed under the Act of 1887?—Yes.

2077. I believe these words, "regard being had to the adequacy of the security," have received judicial interpretation, have they not?—Yes.

2078. It means the security, as between landlord and tenant, for the rent, does it not?—Quite so.

2079. It does not mean the security to the Land Commission for an advance. I think that has been absolutely settled?—I believe it has been decided upon the purchase side.

2080. So that under the Act the landlord, if he consents, can have the rent which he receives redeemed as if it were a head rent under Section 16 of the Act of 1887; or if he does not consent, then the tenant has a right to go off and get a fair rent fixed?—That is so.

2081. I think Mr. Fitzgerald told us that the landlord in the greater number of cases, consented to the fair rent being fixed on account of the costs of showing title?—Just so, that was his evidence.

2082. Supposing a landlord is in receipt of a rent under a fee farm grant of, say a hundred a year, can you tell us anything about the practice of the Commissioners with reference to the value on which they estimate that?—Do you mean in a fair rent application?

2083. No, a purchase?—No; I have no experience of the purchase side.

2084. You do not know?—I know nothing about the practice in purchase cases.

Mr. *T. W. Russell.*

2085. Can you give any information about the purchase side?—No, except so far as it appears that the two cases of O'Hea *v.* Morrison (which deals with the purchase side) and Mollan *v.* Kieran (which deals with the fair rent) both decide practically the same point, that the improvements must be valued not as the property of the landlord.

Mr. *W. Kenny.*

2086. Now I will take the case of fair rent: suppose a tenant is paying an agricultural rent of a hundred a year, and that he has made improvements to the extent of a thousand pounds; in fixing the fair rent in the case, you decided that you would have deducted the value of the improvement, the interest upon it?—Yes; quite so.

2087. But you might have allowed upon the expenditure of the thousand pounds, say 5 per cent. and taken 50*l.* off the rent?—That, of course, altogether depends upon the actual result of the making of the improvements with the thousand pounds.

2088. Oh, yes; of course it does; but I am assuming it to be probable that you would have taken, I will say, 40*l.* off the rent in respect of those

Mr. *W. Kenny*—continued.

those improvements?—That is if the holding had been benefited to that amount.

2089. If the holding had been benefited to that extent?—Yes.

2090. That would leave the tenant's rent at 60*l.* a year?—Yes.

2091. Supposing he went in and redeemed under the first portion of the section, would he not have got 20 to 33 years' purchase of his hundred a year?—Whatever the Land Commission would allow him.

2092. Do not you know from your own experience that that is the amount allowed by the Land Commission where a head rent is redeemed?—I believe so; I really do not know anything about the purchase side of it.

2093. If he got 20 years' purchase he would get 2,000*l.* where he would redeem under the first part of the Act, whereas if your decision was right the allowing for the improvements would cut him down to a mere rent charger of 60*l.* a year. Is not that so?—Yes.

2094. Would not that be applying a wholly different principle, when you come to fix a fair rent, from the principle that would be applied in redeeming the rent itself?—Undoubtedly; but, of course, we take that on the different wording of the statute.

2095. But still if the landlord allows the tenant to fix a fair rent instead of consenting to have it redeemed—the first option given to him by the section—a different principle would have to be applied if you were right in your decision?—Quite so.

Mr. *Clancy.*

2096. But the principle in each case is against the tenant, is it not?—Yes.

Mr. *W. Kenny.*

2097. In these cases of a grant of fee farm, is not the grantee owner in fee subject to a rent?—Yes.

2098. So that you have, in fact, two estates in fee; you have the landlord and the tenant both owners in fee?—Quite so.

2099. And in fixing the redemption value, is not the landlord supposed to get under the section, as a security for his rent, the improvements that have been made from time to time under the holding, is not that part of the security that exists for the rent which he has enjoyed?—That is in the case of purchase?

2100. Yes?—Quite so.

2101. You referred to one or two cases; with reference to that case of Conroy *v.* Drogheda that you referred to; I think you said that the judgments in that case reversed a previous judgment of M'Donnell *v.* Blake?—To the extent that in M'Donnell *v.* Blake, the Chief Baron had held that possession was necessary to enable the tenancy to be determined.

2102. I think you are wrong in saying that they intended to reverse M'Donnall *v.* Blake, because I have a copy of the Lord Chancellor's Judgment, which shows the contrary?—As I have said a couple of times already, in that case of Conroy *v.* Drogheda, as it has not yet been reported, there is a good deal of doubt; I have not seen the official report of the judgment of the Lord Chancellor, but I know that the effect of it was to determine that an alteration in a present tenancy, which under Hagan *v.* Jackson would not have destroyed it, in Conroy *v.* Marquess of Drogheda was held to destroy it.

2103. The Lord Chancellor says, "Neither in M'Donnell *v.* Blake nor in Montgomery *v.* O'Hara had the Court to deal with the implied surrender arising from the tenant by the tenant from the landlord of an inconsistent estate." That is the Lord Chancellor's Judgment. Then further on he says, "In my opinion the doctrine of implied surrender is not destroyed by the Act of 1881 in tenancies to which that Statute applies"?—Yes, that is the principle.

2104. When they came to deal with the facts of the case in Conroy *v.* Drogheda did not they affirm the decision of the Court below?—In Conroy's case?

2105. Yes, in this case?—No, I think not.

2106. Yes, the Lord Chancellor says, "In the present case it seems to me impossible to say that there was any surrender of Mrs. Conroy's present tenancy made or intended"?—It is Mr. Doyle decided it in the first instance, so he should know; but he does not know how the Court of Appeal decided it.

2107. They affirm the decision of the Court below. Now, in the case of these pastoral holdings, Westropp *v.* Elligott, and O'Brien *v.* White, I think Sir Edward Sullivan said, in O'Brien *v.* White, did not he, that it was plain "that the capabilities of the land, and the purpose for which it is destined by nature, are all important if the contract is silent, and are sufficient to raise an implied contract, that is to be its user, if that fact ought reasonably to be present to the minds of both parties to the contract"?—Yes.

2108. So that a tenant can be outside the Act either by there being a specific letting for the purpose of pasture, or by the circumstances of the case, raising the presumption that pasture was intended in the minds of both parties?—That is so.

2109. And in both these case the circumstances and the conditions of the holdings were such as to raise the implied presumption?—That is so; the holdings were found according to the view of the judges "most suitable," or "more suitably used" for pasture.

2110. Now, with reference to turbary: I think you have said in the course of your examination that if there was no right of turbary there must be a bargain between the landlord and the tenant with reference to it; of course, there must be?—Yes, that is so.

2111. Do you regard it as unfair that it should be left to the landlord and tenant to come to an agreement with reference to it?—No. What I think I said with regard to that was that the question very frequently arises before us as to whether the privilege attaches, as of right, to the holding or not, and we have to consider and take evidence as to whether the right of turbary belongs to the holding.

2112. But it was suggested to you in the question that was put to you that the landlord may

Mr. *W. Kenny*—continued.

may unfairly recoup himself for the reduction of the rent by putting it on the turbary. Have you had any case in your experience of the landlord having tried to pursue such a course as that?—I never have in my experience because my duty ceases when I have done with the case without turbary; what the landlord does afterwards I have nothing to do with.

2113. Did you ever hear of such a case occurring?—I have heard—but then it is only hearsay—I have no knowledge.

2114. You referred to Kennedy's case; that was a case of sub-letting for labourer's cottages, was it not?—Well, they were labourers employed, I think, in that particular locality.

2115. But they were not workmen employed on that particular holding, were they?—Certainly not all of them.

2116. Were any of them?—I think one was.

2117. And do you remember how many cottages there were?—There was one yearly tenancy, and I think there were six or seven monthly lettings. One was a yearly tenancy, and there were seven monthly tenancies.

2118. You have already referred, in connection with the labourers' cottages, to the 4th Section of the Act of 1887, have you not?—Yes.

2119. That provides that "a tenant shall for the purpose of the Land Law (Ireland) Act, 1881, and of this Act, be deemed to be in *bonâ fide* occupation of his holding notwithstanding that he has sub-let part thereof, provided the sub-letting is for the use of a labourer or labourers *bonâ fide* employed and required for the cultivation of the holding, and the Court deems such sub-letting reasonable, and sanctions the same. The land comprises in each such letting shall not exceed half an acre in extent. There is another provision, is not there, in the Act of 1881, with reference to labour, in the 18th Section?—Yes.

2120. "Any person prohibited under this Act from letting or sub letting a holding may, after service of the prescribed notice upon the landlord, with the sanction of the Court, and with power for the Court to prescribe such terms as to rent and otherwise as the Court think just, let any portion of land in a situation to be approved by the landlord, or failing such approval to be determined by the Court, with or without dwelling-houses thereon to or for the use of labourers *bonâ fide* employed and required for the cultivation of the holding"?—Yes.

2121. I understood, from an answer of yours some time ago, that the consent of the landlord was required in those cases; that does not seem to be required under that 18th section, unless as to the situation, does it?—No; that is so. A letting which is strictly made under that 18th section, of course, is excluded from the general law.

2122. It is excluded from the general law?—It is governed only by that 18th section.

2123. So that there is nothing whatever to prevent the landlord of a holding making these lettings for the purpose of employing labour on the holding?—For the tenant of the holding; that is, provided he complies with that 18th section.

Mr. *W. Kenny*—continued.

2124. I think you said also, in reference to Kennedy's case, that the lease, or the grant, contained a sort of *habendum* to Kennedy and his "under-tenants." That is a very unusual form, is it not?—As far as I remember, I said, in answer to Mr. Russell's question, that the land was granted as in the possession of the lessee and his under-tenants. The grant, or the lease, that was before us (I think it was the grant) certainly referred to his "under-tenants."

2125. Do you mean to say that in the grant, or the lease, you saw, it was not to Kennedy, "his executors, administrators, and assigns," but to Kennedy "and his under-tenants." I never saw such a form?—I had not all the leases before me; but it may have been a prior lease out of which the grant grew, which was changed for a grant afterwards.

2126. Are you sure that it was made to him and his under-tenants?—I said, in answer to Mr. Russell, when he asked me that question, that I had not the grant before me, and of course I was not able to say absolutely. It would be an interesting grant to produce. Some of those grants are made more in the form of leases. We have had a great number of those grants in the form of ordinary leases, but with the term "for ever."

2127. Mr. Sexton said that there were about 47 exceptions and exclusions under the Act; but some of those he referred to were the creation of tenancies by landlords who were tenants for life, were they not?—Yes.

2128. Do you find that you refuse many applications to fix a fair rent on the ground that the landlord is tenant for life?—I think I mentioned that I had two or three last week in Cavan. I dismissed two cases on that ground.

2129. That is only two?—That is last week. I have not met them very frequently, but now and then they crop up.

Mr. *T. W. Russell.*

2130. May I ask when the decision regarding this tenancy was given?—Peyton *v.* Gilmartin was about four years ago.

Mr. *W. Kenny.*

2131. Massy *v.* Norse was very much previous to that, was it not?—Massy *v.* Norse was under the 21st section of the Act of 1881. It is in the 20th Law Reports, Ireland.

2132. Peyton *v.* Gilmartin, I think, proceeded very much upon Massy *v.* Norse, did it not?—Yes. In Massy *v.* Norse the judgment was given in 1887.

2133. Then in Peylon *v.* Gilmartin I think judgment was given about 1891 or 1892?—Yes.

2134. Have you had any other cases, besides the two you refer to, before you in which this particular point was raised?—I have now and then. They do not turn up very frequently. Now and then I have one of them.

2135. I think you said that the fact that arrears were due by the tenant operated as a deterrent to prevent them coming into the land

Mr. *W. Kenny*—continued.

land court. Is it not possible for the tenant to get a stay of proceedings under the Act of 1881 and the Act of 1887?—That is, where actual proceedings have been taken.

2136. Yes?—The question, I think, put to me was with reference to the tenant who owed arrears, and did not wish to serve his notice, owing to the fact that this arrear was hanging over him.

2137. And where the landlord had taken no proceedings against him?—Where the landlord had taken no proceedings against him.

2138. Under the 13th Section of the Act of 1881, Sub-section 3, there is a power given: "Where any proceedings for compelling the tenant of a present tenancy to quit his holding shall have been taken before or after an application to fix a judicial rent, and shall be pending before such application is disposed of, the Court before which such proceedings are pending, shall have power, on such terms and conditions as the Court may direct, to postpone or suspend such proceedings until the termination of the proceedings on the application for such judicial rent"; is not that so?—Yes.

2139. Then the 30th Section, I think it is, of the Act of 1887, says: "In any proceedings for the recovery of a holding to which this section applies, for non-payment of rent, or in any action for debt or damages by any person against the tenant of such holding, if the Court in which the proceedings are pending is satisfied that the tenant of the holding is unable to satisfy, by an immediate payment in full, the judgment and costs, and that such inability does not arise from his own conduct, act, or default, and there is reasonable ground for granting an extension of time to pay, the Court may put a stay upon the execution"?—Yes.

2140. So that whenever proceedings are taken, he can apply under either of those two sections, can he not?—Yes.

2141. Now with reference to your suggestions as to what ought to be filed as a record in regard to improvements; I think you said that you considered that the pink paper, or some paper, ought to state what is allowed in respect of each class of improvements?—Yes.

2142. Would it be an argument against that suggestion of yours that it would be only affording material for further appeals?—I think it would prevent them in some way.

2143. *Primâ facie*, it would be desirable, no doubt?—It would prevent appeals in a way. At present a great number of appeals are taken owing to the ignorance of the parties as to what was allowed with respect to their improvements; there they would see definitely what they had got allowed.

2144. I suppose you would be in favour of also retaining the record of the general user of the holding by the tenant with reference to deterioration, or otherwise?—Of course, that is put on the present form.

2145. That appears on the pink paper?—Yes, it does.

2146. You were asked with reference to fair rent orders being made where there was no jurisdiction; of course, the judicial rent in that case would not be binding?—That is so.

Mr. *W. Kenny*—continued.

2147. And you said it was quite possible that the tenant's title might be questioned at any time?—Yes.

2148. That is only stating a general rule of law, is it not?—Quite so.

2149. The decision of the Sub-Commissioners is not an absolute decision that is binding in every Court?—No, the landlord may serve an ejectment at any time during the statutory term, and proceed to the House of Lords upon that ejectment.

2150. It depends upon the Commissioners' exercise of the jurisdiction vested in them by the Act of Parliament?—Quite so.

2151. Do not you find in almost every case that comes before you, that wherever it is possible to raise a point (at least, if the landlord does not wish to have a fair rent fixed), every fair point is raised?—Yes, as a general rule.

2152. Is not that the tendency?—Yes, all those points are raised.

2153. Do you think it likely that many of those points would be raised in ejectment or other proceedings afterwards?—That is where the statutory term is given?

2154. Where the Commissioners exceed their jurisdiction, or go out of their jurisdiction?—I am not aware of any case of the kind.

2155. You said the title might be questioned at any time, did you not?—Yes, quite so.

2156. Is not that a bare possibility, having regard to points that are always raised by the landlord, which give rise to legal discussion?—Yes; I am not aware of cases where subsequent proceedings are taken to eject the tenant. All I said was that it was possible to do so.

2157. Would you say there would not be 1 per cent. in which such a state of circumstances could arise?—Of course I could not say what per-centage, for this reason: there may be an immense number of cases where it would be possible to bring those proceedings. Of course, I have no means of judging as to that.

2158. Would you consider that it would be advisable to have reporters following the Sub-Commission in order to report the decisions of the Sub-Commissioners?—As a rule my own practice is, in giving a judgment on a point of law, to give a written judgment, and as a rule there are reporters from some of the local papers there who wish to get those judgments, and they are very often published in the local papers, that is, those dealing with any interesting question or point of law.

2159. From what you know, would it be impossible, or would it be possible, for the Council of Law Reporting in Dublin, if they had to find the funds for the payment of the reporters, to send down to all the Sub-Commissions?—I did not understand Mr. Healy to speak of the Sub-Commissions, but of the Chief Commissioners.

2160. Supposing we were to send round a reporter to all the Sub-Commissions, you would not be against our getting a Government grant for that purpose, would you?—Oh, no.

2161. Mr. Healy I think referred to the Lords' Committee of 1883 (paragraph 26), in which there was a certain amount of disapproval of the

Mr. *W. Kenny*—continued.

Commissioners being guided simply by valuers?—Yes.

2162. If you remember the paragraph that Mr. Healy read, that was a case in which the Commissioners would have no further evidence save the evidence of the valuers, was it not. Can you say whether or not the Commissioners are guided altogether by the report of their valuers?—Oh, no; I certainly do not think so.

2163. Have not they got before them the report of the two lay Sub-Commissioners?—Yes.

2164. They have also the evidence that was given below, before you, have not they?—No, but they have the evidence given before themselves.

2165. Have not they also a report of the evidence given before you?—Not to my knowledge. I do not furnish them with any.

Mr. *W. Kenny*—continued.

2166. You do not furnish them with any report?—No.

2167. But they have as a general rule the same evidence given over again before themselves as that which was given before you?—Yes.

2168. By both landlord and tenant?—Yes, by both landlord and tenant.

2169. Then they are fortified by the report of their own valuer?—Yes.

2170. And they have got the decisions arrived at by the two Sub-Commissioners below, assisted by the Legal Commissioner?—Quite so.

2171. So that they have ample material before them for coming to a judgment?—It is a full re-hearing.

Tuesday, 22nd May 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Fuller.
Mr. W. Kenny.
Mr. Macartney.
Mr. John Morley.
Mr. T. W. Russell.
Colonel Waring.

THE RIGHT HON. JOHN MORLEY IN THE CHAIR.

Mr. W. F. BAILEY, again called in; and further Examined.

Chairman.

2172. I UNDERSTAND you have an explanation that you wish to make to the Committee?—Yes. With the permission of the Committee I should be glad to refer to a couple of matters that arose out of my evidence, on reading over the official Notes. I think that they might give rise to some misapprehension. One is with reference to the case of Conroy *v.* The Marquis of Drogheda, a case to which I referred on several occasions. I stated previously to the Committee that my reference to that should be taken guardedly, as no official report had appeared at present. In last Saturday's "Law Times" it is reported at full length, and I have been able to read the facts of the case as set forth there. It would appear that in that case the Court of Appeal, affirming the decision of the Land Commission, did hold that a tenant was entitled to have a rent fixed on the ground that there was no intention to surrender the holding; but in coming to that conclusion the Court of Appeal laid down at great length their views on the question of the determination of a present tenancy by the taking out of a new tenancy, which would be equivalent to a surrender by operation of law. I stated that the decision was one which might be taken as enabling tenants and landlords to contract out of the Act of 1881, and, of course, if that view is right, it is a decision of very great importance. I should simply like now to state to the Committee what was really decided by the case as regards the matter of law.

2173. Do you regard it as modifying the answer you have already given?—No, except so far as this, that the facts of that case I was wrong in; I did not know the facts.

Mr. *Brodrick.*

2174. Not only the facts, but also as regards the decision, as I understand?—No; what I say is that, with regard to the interpretation of the decision, I think my statement was right; it is with regard to the facts that I was wrong.

Chairman.

2175. State in your own way what it is you wish the Committee to understand. Will you tell us what are the numbers of the questions you refer to?—This is in answer to Mr. Healy, I think. I referred to the case, I think, on all three days, Question 936.

Chairman—continued.

2176. Question 936 was put by me?—What is said there is that the case decided that, where the tenant on a present tenancy enters into a lease or contract, such lease or contract is binding to exclude him from the provisions of the Act of 1881, that is that he would become a future tenant. Well, from the decision of the Court, which, as I say is reported in the Irish "Law Times" of Saturday last, it would appear that in that case the tenant of a present tenancy, subsequent to the passing of the Act of 1881, entered into a new agreement with the landlord (it was a woman in this case) whereby she became his tenant on a tenancy comprising a present tenancy of 10 acres on another holding, and then when she applied to the Sub-commission to get the rent fixed, the Sub-commission, following the law as it was then understood to be decided in the case of Hagan *v.* Jackson and other cases, decided that the present tenancy was still subsisting, and that the right rule to adopt was to take off the 10 acres added, and fix the rent of the subsisting present tenancy. However, the Court of Appeal, on the arguments, held that that view of the law is incorrect, and that it is quite possible to determine a present tenancy if the parties have the intention to so do, and that without giving up possession of the holding to the landlord. Thus, if a new lease or contract shows an intention on the part of both landlord and tenant to create a new tenancy, the old present tenancy and its incidence is destroyed, and a future tenancy is created, consequently there is nothing to prevent a present tenant, without giving up the physical possession of his holding, entering into a new contract without destroying his old present tenancy. As I pointed out, in that and other answers to questions, that decision would upset the reading of the law which had been followed for some years past, and under which it was held, to quote the words of the Chief Baron in that case of Conroy *v.* The Marquis of Drogheda, "that having regard to the 20th section of the Act of 1881, a tenancy to which the Act applies can only be deemed to be determined whenever the

Chairman—continued.

landlord has resumed possession of the holding, and that without the resumption of possession there can be no determination of the tenancy by that which otherwise would be equivalent to a surrender by operation of law"; and the Chief Baron goes on to show that that reading of the law is not correct, and cannot in future be followed.

2177. How did the court go in Conroy *v.* Drogheda. I forget; were they all one way?—Yes; they were all one way in holding that it is quite possible to surrender a present tenancy without resumption of possession by the landlord, which of course is the point.

2178. They agreed with the Chief Baron in the words you have just read, that the other view was erroneous?—Yes, they agreed with him. There is an excellent article setting forth the view of the law as previously followed, and as laid down in this case of Conroy *v.* The Marquis of Drogheda in last Saturday's "Irish Law Times," which gives the various judgments accurately.

2179. That is all you wish to state, is it?—That is what I wish to state with regard to that case; but there is another case.

Mr. *T. W. Russell.*

2180. Do I understand that the actual result of Conroy *v.* the Marquis of Drogheda is this: that there can be no surrender of a present tenancy unless both parties intend it?—Yes, that there must be the intention to surrender, but when once the intention is shown, there is nothing to prevent its operation.

Chairman.

2181. An intention on one side to surrender, and on the other to accept the surrender?—To accept the surrender; once that is shown there is nothing to prevent the present tenancy being surrendered, and the new tenancy created, without resumption of possession, which had been the old idea.

Mr. *Brodrick.*

2182. The presumption in this case being that the lease to be obtained is a more valuable thing to the tenant than the present tenancy. That is the presumption, is it not?—No, not exactly. The Court of Appeal seem to me expressly to bring in the old law dealing with surrender by the operation of law, and under that old law it was clearly held that the taking out of a new tenancy (which may be even less valuable than the one the place of which it takes) is equivalent to surrender by operation of law. The other point that I should like to refer to is, with regard to some answers I gave, also, I think, to Mr. Healy and to Mr. Kenny, with reference to questioning a fair rent order.

Mr. *W. Kenny.*

2183. Peyton *v.* Gilmartin, do you allude to?—No; this is as to the question of the validity of the fair rent order.

Chairman.

2184. What case does it deal with?—I did not refer to any case; I merely gave it as my opinion.

Mr. *W. Kenny.*

2185. I think it is about Question 1739?—I have mentioned it there; that question of Mr. Kenny's refers to the subject. Mr. Healy then goes on in the following Questions 1739 and 1741.

2186. It goes down to 1749?—Quite so; I stated my view that it was open to a common law court to question the validity of a fair rent order, and if such court came to the conclusion that the fair rent order was made *ultra vires* or without jurisdiction, to treat it as a nullity. Having regard to the judgment of Chief Baron Palles in a reported case, *Ex parte* Johnston (it is reported in 14 Law Reports, Ireland), I would like to make my meaning plain as it may give rise to some further question. In that case (*Ex parte* Johnston) an application was made to the Exchequer Division for a writ of prohibition against the Land Commission to prevent the Land Commission from enforcing a fair rent order on the ground that the tenancy with respect to which the order was made was a future one. The Chief Baron held that once it was shown that the relation of landlord and tenant existed between the parties the Land Commission had jurisdiction on a point as to whether that tenancy was a present or a future one. "All we can do," said the Chief Baron in that case, "when the decision of the Land Commission is complained of, is to see that the case was one within their jurisdiction, and having done so, our functions cease." This decision of the Court of Exchequer was made expressly on the ground that when jurisdiction was shown, the Land Commission had full authority to make a binding order. But, in my opinion, that does not rule the question as to whether an order of the Land Commission can be questioned on ejectment or otherwise where no jurisdiction is shown. Thus certain classes of tenancies are excluded from the fair rent provisions of the Acts by Section 58 of the Act of 1881. The Land Commission has no jurisdiction to fix rents in such cases, and I do not see that there is anything to prevent an order, if made in such a case, from being questioned by the common law courts. Thus, if a fair rent order were made with respect to a non-agricultural holding, such as a villa residence near a city, I do not see that there is anything to prevent the landlord from bringing an ejectment, notwithstanding such fair rent order, and have the question tried as to whether the holding is within the jurisdiction of the Land Commission or not. The Land Commission cannot give itself jurisdiction by a wrong decision. The words, "landlords and tenants," in the 37th section (Sub-section 5) of the Act of 1881 must, in my view, mean landlords and tenants to which the Act applies, and, in my view, such a reading is quite consistent with the Chief Baron's judgment in *Ex parte* Johnston. Then I went on to refer, as an illustration to a case decided by Mr. Justice Holmes, where he gave a decree in ejectment following on an order fixing a fair rent by my Commission at Downpatrick.

Chairman.

2187. That is on the Downshire estate?—That is on the Downshire estate. Well, I have looked into

Chairman—continued.

into the facts of that case, and I would be glad to shortly state them. It was a case of Quinn, tenant, Marquis of Downshire, landlord.

Mr. *W. Kenny.*

2188. It is unreported, is it?—It is unreported.

2189. Can you give us the date?—I shall give you the date shortly.

2190. Or if you have the file, that will give the particulars?—Yes, I have the file here. A present tenancy in that case was subsisting in a holding near Dundrum, County Down, on the passing of the Act of 1881; this tenancy subsequently came into the possession of a man named Quinn. During his tenancy, according to the evidence given before the Sub-Commission Court, Quinn signed an agreement on a printed form with the guardians of the Marquis of Downshire, which recited that the premises were part of the town parks near Dundrum, and that, to quote the agreement, "the said premises upon and before the execution of these presents were in the exclusive possession of the said Marquis." The evidence subsequently given before us, evidence of receipts and oral evidence, showed us conclusively that this recital in the printed form was, as a matter of fact, incorrect; that the premises were not in the possession of the Marquis; that they were actually in the possession of Quinn at the time he signed the agreement, the date of which was 6th February 1885. Well, in the year 1891, on the 25th April, Quinn served an originating notice to have a fair rent fixed. The day following the service of this notice the landlord served on him a notice to quit. An ejectment was brought before the county court judge at the Easter quarter sessions, 1892, on this notice to quit, and a decree was given by the county court judge, which was appealed against at the judge of assize. On the 2nd June following, pending the appeal, the originating notice came on before my Sub-Commission at Downpatrick, when it was argued, on behalf of the landlord, that the application should be dismissed on three grounds: (1) that the holding was a town park; (2) that there was a future tenancy in the lands; (3) that the decree of the county court judge destroyed the tenancy. Having regard to the law as it was then read and considered to exist I held that, in the first place, the holding could not be a town park, because then Dundrum was held not to be a town within the meaning of the Land Act, and, not being a town, you could not have town parks; and with regard to the future tenancy point I held, relying on the 13th section of the Act of 1881, sub-section 3, and the 20th section of the same Act, and on the judgment of the Court of Appeal, as given by Lord Ashbourne in the case of Montgomery *v.* O'Hara, that the present tenancy subsisting in 1881 was not destroyed by the agreement of 1885, and that consequently it was a present tenancy; and, with regard to the third point, that the decree of the county court judge destroyed the tenancy. That point I also held under the expressed words of Lord Ashbourne in Montgomery *v.* O'Hara, that the mere giving a decree did not destroy the tenancy unless possession was resumed by the landlord under that decree; consequently I held that the tenancy was a present tenancy, to which the Act applied, and fixed a fair rent. The case came on before Mr. Justice Holmes in the following month of July, sitting as judge of assize at Downpatrick, and he, on a re-hearing of the county court judge's decree, gave a decree in ejectment, under which decree the landlord subsequently entered into possession of the holding, and is, I believe, in possesaion of it still. I quote that as an instance. Of course I do not pretend to state to the Committee what were Mr. Justice Holmes's grounds for giving the decree. What I wish now to put before the Committee is the facts of the case.

Mr. *W. Kenny*—continued.

Mr. *Brodrick.*

2191. You give it as an instance, you say?—I give it as an instance where I knew of the fair rent order not being a bar to a subsequent decree in ejectment.

Mr. *Macartney.*

2192. You have only given us the facts so far as you are aware of them?—Certainly.

2193. Other facts may have been both before the county court judge and Mr. Justice Holmes?—Undoubtedly; I have to avoid misconception, giving the facts as they were before me.

Mr. *W. Kenny.*

2194. In that case, is it not quite possible that the judge of assize, Mr. Justice Holmes, might have considered that the tenant had entered into that agreement with his eyes open, and made a deliberate contract with his landlord, admitting that these were town parks?—I cannot see that a contract admitting that they were town parks can make a place a town park when there was no town.

2195. Could it not have been decided on the ground of personal estoppel as between landlord and tenant; what do you say to that, as a lawyer?—We have never held that doctrine, that you can by personal estoppel determine a thing to be what it is not in law.

2196. Do not you think it possible that a judge of the Supreme Court may have so decided in accordance with the law?—It is quite possible.

2197. That he may?—That is quite possible.

2198. With reference to Conroy *v.* Drogheda, you were asked this (Question 938): "But that is a reversal of a previous decision, is it not, practically?" That is the question put to you, and you say, "It is; it overrules the Chief Baron's decision in M'Donnell *v.* Blake. (*Q.*) That is one of the most far-reaching decisions ever given, I suppose, under the Land Act, is it not? (*A.*) Possibly?"—Yes.

2199. I suppose your reference there is to Conroy *v.* Marquis of Drogheda, is it not?—Quite so.

2200. Then Question 941: "Will you make quite clear to us what the effect of that decision in Conroy *v.* Drogheda is? (*A.*) It is a case where a lease was made in the present tenancy, and the lease was held by the Court of Appeal to be the creation of a new annual tenancy, which

Mr. *W. Kenny*—continued.

which new tenancy, of course, being made since 1883, is a future tenancy?"—Yes.

2201. Your explanation to-day shows that that answer of yours was incorrect?—Quite so; that the facts were incorrect; but if you would allow me to state it, Mr. Walker, the Lord Chancellor, in his judgment said, "Apart, therefore, from the special facts of this case, I think the tenant would fail." It was on the special facts, showing that there was no intention to surrender, that they decided in favour of the tenant; on the facts otherwise, they decided against him.

2202. Is it not a question of intention altogether; I think you have already said so?—Yes.

2203. It is a question of intention altogether?—Yes, it is a question of intention altogether.

2204. So that, when a tenant enters into a contract with his landlord to give up his present tenancy and to take a new tenancy, that may have the effect of making him a future tenant?—Quite so.

2205. And that is a contract that he may enter into with a landlord for valuable consideration?—Yes.

2206. So that, unless we assume the tenant to be an absolute fool, the law as it stands, with reference to these implied surrenders, is reasonable enough, is it not?—It is. The difficulty, I may say, that arose in the minds of the Land Commission was on the 22nd section of the Act of 1881, which prohibited the making of any contract which barred the operation of the Act of 1881; and of course this decision would seem to open the door to making a contract which would bar the Act of 1881.

2207. But do you consider that it would be an advisable thing to prevent the tenant from surrendering his holding at all, where the surrender might be made upon advantageous terms to him?—As to the policy of the matter, I do not question it at all; I am merely stating the legal effect.

2208. I ask you, from your experience, do you think it would be an advantageous thing to tie the tenant up altogether from surrendering his holding, if he thought it advantageous?—I think myself there are cases in which it would be very disadvantageous to the tenant to prevent him, but the policy of the Act of 1881 seems to have been to prevent him.

2209. Might there not be a great number of cases, perhaps the majority of cases, in which it would be for his benefit?—Certainly.

2210. At Question 1630 (I think it was the next day) you said that what Conroy *v.* Drogheda really decides is this: "The previous law with regard to the creation of future tenancies is this: that if a tenancy was a present tenancy at the passing of the Act of 1881, and if subsequently a portion of land was added on to that present tenancy and the tenant held on in possession of the present tenancy, and the bit that was added on did not destroy the present tenancy, when the court came to fix the fair rent they could get rid of the piece that was added on, and proceed as against the original present tenancy"?—Yes.

2211. In Conroy *v.* Drogheda, was not the originating notice amended below by striking out the added bit?—It was.

Mr. *W. Kenny*—continued.

2212. So that the net decision was not a decision as to whether or not the tenancy in the old tenancy was surrendered, but a new tenancy created?—Yes.

2213. Now, the decision in Conroy *v.* Drogheda was a decision on the facts in favour of the tenant?—It was.

2214. Now, with reference to Peyton *v.* Gilmartin, you will find your answer at 918. My own recollection of Peyton *v.* Gilmartin was not very clear the last day. I ask you at Question 918, "Do you remember in Peyton *v.* Gilmartin whether it was the landlord or the tenant who insisted that the tenancy had come to an end; my recollection is that it was the tenant who insisted on it." You say, "No. I know Mr. Justice Holmes lays down the view that it would govern the case of a statutory tenancy; a statutory tenancy which was inexistence, and created as against a life tenant"?—Yes.

2215. Now, have you looked up Peyton *v.* Gilmartin since the last day you were here?—I have.

2216. Was I not right in saying that it was the tenant there who resisted the enforcement of the judicial rent?—Yes.

2217. Now, from your recollection of Peyton *v.* Gilmartin, was not Peyton *v.* Gilmartin a case in which an action was brought by a remainderman for life, for the purpose of enforcing a judicial rent that had been fixed during the existence of a previous life tenancy?—Quite so.

2218. And the tenant resisted that upon the ground that it was a judicial rent fixed during the life of the life tenant?—Yes.

2219. And he succeeded, did he not?—And he succeeded; but of course the principle was laid down which will govern all cases.

2220. Quite so, but I want to have the fact that it was the tenant who was resisting the judicial rent?—Yes. My reference to Peyton *v.* Gilmartin was not at all with regard to the particular facts of the case; it was with regard to the particular principle of law that grew out of it.

2221. You have given a specific answer there which is evidently inaccurate, namely, that it was not the tenant who was resisting the judicial rent; it is only from want of recollection that you were inaccurate?—I should like to say that in my answer to that question I was thinking mainly of the principles of law which govern the large number of cases, and not of the particular facts decided in the particular case. In Peyton *v.* Gilmartin it was the principle of law that ruled all these questions of tenancies created by tenants for life which I was dealing with.

2222. In the cases you referred to with reference to Conroy *v.* Drogheda, just going back to it for a moment, M'Donnell *v.* Blake, and Jackson *v.* Hagan, were not these cases that were decided in favour of the tenant?—Yes, they were.

2223. Mr. Justice Bewley, I think, held in Jackson *v.* Hagan, did he not, on the wording of the 23rd section of the Act of 1881, that the acquisition by a tenant of a small additional parcel of land, and the fixing of a bulk rent for the

Mr. *W. Kenny*—continued.

the enlarged holding, has not the effect of destroying a present tenancy previously existing." That is Jackson *v.* Hagan?—Yes, which, as I said, has been upset by Conroy *v.* Drogheda.

2224. Do you go the whole length of saying that it has been upset by Conroy *v.* Drogheda?—Certainly.

2225. Considering that the portion that was added on to the new holding was struck out below?—Oh, yes; because the reasons given by the Chief Baron in a very careful and lengthy judgment in Conroy *v.* Marquis of Drogheda show clearly that the principle on which the Land Commission decided Jackson *v.* Hagan was a wrong principle.

2226. But, speaking as a lawyer, does Conroy *v.* Drogheda go further than this; that it affirms that the rule of law with reference to the surrender or the implied surrender of a holding still exists, and is not touched by the Land Acts?—Yes, it affirms that; but that is the whole question at issue.

2227. Is not the whole gist of Lord Chancellor Walker's decision?—Yes; but that was not previously considered the law.

2228. Does it go further, in M'Donnell *v.* Blake, and Jackson *v.* Hagan, than simply affirming that doctrine of implied surrender?—No, that is what it does. Of course, the previous law was that implied surrender did not apply under the Land Act.

2229. You referred on the last day to Crookshank *v.* Law. At Question 984, Mr. Leese puts this to you: "That was a mill"? referring to Boyle *v.* Foster; and you say: "It has been also held, in the case of Crookshank *v.* Law, that a taking of three acres of agricultural land by a man who wanted to add that on to his residence would be outside the Act."—Yes.

2230. I am afraid the impression left upon the minds of the committee was that that was an ordinary agricultural holding. In Crookshank *v.* Law it was not a tenant of that kind; in Crookshank *v.* Law it was a solicitor residing at Portrush, and I believe he held a villa outside Portrush, with six acres of land attached to it?—Quite so.

2231. I believe it was deposed to in that case that he wanted these additional three acres, not for any ordinary agricultural purpose, but simply, as he said himself, to prevent certain parties from the town coming there, is not that so?—Well, I do not see that in the judgment, but probably it is so.

2232. I was in the case, and I remember it was so distinctly. You will not find it in the evidence *there*, it was taken below?—"In the agreement the tenant was to cultivate the land in a husbandlike manner. The land being situate near Portrush, a town which is extending in the direction of the district in which the land is situate, it was suitable for villa purposes, and this characteristic was mentioned at the time of the agreement."

2233. Is there anything in the landlord's evidence about the purposes for which he required it?—No, there is nothing here.

2234. I remember evidence was given with reference to it. Was it not in effect decided in

Mr. *W. Kenny*—continued.

Crookshank *v.* Law, that the three acres that were taken there were not required for any agricultural purposes; is not that the nett decision?—Yes, that was the decision. The head-note, if you wish, I shall read.

2235. Oh no; the head-note is of no use. Now, upon the question of towns and town parks, at Question 1012, Mr. Sexton asked you: "What is the term now?" (there is a reference to Caledon *v.* Archer), and you reply. "They decided that it is not necessary that the place should have any particular population, that any assemblage of houses and people which created a demand for accommodation land constituted a town"?—Yes.

2236. Then Mr. Sexton asks you again; "Do you mean half-a-dozen houses?—(*A.*) If it created a demand for accommodation land, yes. The result of that decision is that places have been held to be towns. Five Mile Town has been held to be a town, with a population of 500; Dundrum, in County Down, has been held to be a town, with a population of 376, I think." Now, do you wish to qualify that answer? You say: "If it created a demand for accommodation land"; must not there be something more, and was not that the decision in Archer *v.* Caledon, that there must be something answering to the ordinary characteristics of a town?—I read the judgment, I think, in Archer *v.* Caledon on one of the previous days, giving the exact words of the Lord Chancellor.

2237. Is not that the effect of it? Will you give us your own interpretation of it now? Is not that one of the conditions, that there must be something more, that a few houses at cross-roads would not create town parks?—Well, all I can say is, if you take the case decided on Archer *v.* Caledon, by Mr. Justice Bewley, you will see that his interpretation is rather different from what you ask me.

2238. Take the case of M'Cann *v.* Marquis of Downshire, you find it on page 58?—I see in Mr. Justice Bewley's judgment in that case, he says it would be a mistake to suppose that a large number of houses must exist to create a demand for accommodation land; that is M'Cann *v.* Downshire, a case decided by Mr. Justice Bewley subsequently. I should say that in the case of Timoleague, a case which was subsequently decided, a less population even than that of Dundrum was held to constitute a town.

2239. You are perfectly right, I think, in saying that population is no longer a test. That is right, but there must be an assemblage of houses, there must be some characteristics of a town about it?—Oh, yes.

2240. In Archer *v.* Caledon, did not the Lord Chancellor lay down what Mr. Justice Bewley subsequently recognises as the three requisites to constitute a town park; first, occupation by a person living in the place, he would not call it a town; No. 2, increased value by reason of being near that place; and No. 3, that the place must have the general characteristics of a town, namely, people requiring accommodation land, and willing to pay more for it than under ordinary circumstances?—Yes.

Mr *W. Kenny*—continued.

2241. Now, I think you referred to another case of McNamara, Question 1020: "What have you got to say about the proviso in Section 9 of the Act of 1887, 'as an ordinary agricultural farm'; what is the meaning of those words. (*A.*) That is a saving provision in the 9th section of the Act of 1887, which would bring in a letting used as an ordinary agricultural farm. That has given rise to some discussion and decision as to what is the meaning of being used as an ordinary agricultural farm. It has been held by the Court of Appeal in the case of McNamara *v.* McNamara, that where the land was used for conacre purposes and for sheep-grazing, that that was not used as an ordinary agricultural farm." Now in McNamara's case that was an Ennis case, was it not?—It was.

2242. That was also a case somewhat like Crookshank *v.* Law, a solicitor practising in the town of Ennis?—I do not know the facts, all I know is the principle of law that is decided there.

2243. Do you know the facts sufficiently to know that the land there had been conacred at 6*l.* an acre?—No, I do not know the facts. I can refer to the report for you; I think I have got the report here.

2244. You may as well give us the reference to the "Irish Law Times"?—It is in 27 "Irish Law Times" Reports. It is on page 2. Shall I read it?

2245. No; just look and see whether that was not a portion of the evidence, that this particular land was conacred at 6*l.* an acre or year, by the tenant?—"During the tenancies of Mr. Talbot and of his widow, the lands were let in conacre every second year to persons residing in Ennis, and in the intervening years crops were grown on it by Mr. Talbot, and after his time by his widow. The rent of the conacre was 6*l.* per Irish acre; they used the land for potatoes."

2246. And they held there, did they not, that it was not an agricultural holding?—They did.

2247. Upon the particular facts of the case?—Oh, yes; it was upon the facts of the case; but then the Chief Baron, in his judgment, went on to explain that the word "agricultural" in the 9th section, had a specific meaning. Of course I may say, in parenthesis, that judgments like that of the Chief Baron in that case, although deciding a trivial point in the particular case, have to be applied by us to large classes of cases afterwards.

2248. I may ask you, as you have made that observation: have not the Court of Appeal been very careful, in any cases that have come before them, in guarding themselves against deciding any general principles if they can possibly avoid it?—Yes. I stated that on a previous day, that the Court of Appeal refused to state principles.

2249. And that they decide each case upon its own facts as far as they possibly can?—Yes; upon its own facts.

2250. Now, will you kindly go back to Answer 665; when you came to ascertain what would be a fair rent, and how you fixed that point, you were asked: "As to rates and taxes, what do you say?" and your answer is: "Rates and taxes have also to be considered as outgoings which have to be paid by the tenant." I want to know from you exactly how that stands with reference to a certain class of tenant in Ireland. There are a great number of holdings, are not there, which are valued at, and under 4*l.*, where the landlord has to pay all the taxes?—Yes.

Mr. *W. Kenny*—continued.

2251. Are you able to tell us how many holdings in Ireland there are rated at 4*l.* or under?—No, I do not remember.

2252. Am I right in saying that there are 127,000. I believe the entire number of holdings in Ireland is 486,000 or 487,000?—It is generally put at somewhat over 500,000.

2253. Over 500,000 now?—Yes.

Mr. *T. W. Russell.*

2254. Do you mean by "rates" "county cess"?—County cess and poor rates.

2255. I thought the occupiers in Ireland paid county cess?—Yes, in the case of tenancies since 1870. I think I stated that in answer to the Chairman.

Mr. *W. Kenny.*

2256. Now, upon the question of presumption, you said this: (Question 865) "Then wherever there was no presumption the case was against the tenant?" That is the question that was put to you, and you say: "Yes; where there was no presumption the result was against the tenant because he claimed to be exempted from rent, and the onus of proof lay upon him." Is it your experience that there are a very large number of cases in which that state of facts appears?—That there is no presumption.

2257. That an injustice is done to the tenant. I may put it in this way to you: Have you had many cases before you in which you are morally convinced that the tenants made the improvements, and where you were not able to give effect to that moral conviction of yours?—I must say I have.

2258. A large number?—I have had a large number of cases where we are confident of the fact, and the tenant is unable to give evidence with regard to the making of improvements; but from the history of the holding we have very little doubt in our own minds that they were made either by the tenant or his predecessor.

2259. First of all in those particular cases you found that there were improvements?—Yes.

2260. And then from the history of the holding you have come to the conclusion that the tenant had a moral claim?—I do not like to stick in the "moral claim," but what I think is, that from the history of the holding it was evident to us that if the presumption had been the other way, for example, the tenant would have been entitled to credit for these improvements, but we cannot give him credit when there is no presumption in his favour, and when he is unable to prove them.

2261. Because he was unable to give you any legal evidence that he had made the improvement?—Yes.

2262. Or his predecessor in title?—Yes.

2263. You

Mr. *W. Kenny*—continued.

2263. You say that you have had a great number of these cases?—I do not like to use those general terms, but I certainly have the impression on my mind that in a very considerable number of cases that state of things existed.

2264. I do not know whether you would refer us to a number of those cases, now or later on, where the tenant had made the improvements and where you were unable to give effect to them?—It is a rather difficult matter to answer, in this way: that it would oblige me to go back over years of notes of individual cases, and, of course, even in taking my notes, I, as a rule, omit from those notes evidence of claims of improvements that cannot be legally established.

2265. Are these cases principally in the north?—Yes, principally in the north.

2266. Have you had any recent ones, within the last year or two, that you could give us a reference to?—I shall, if you wish, look through my notes of cases that I have recently heard in Armagh.

2267. I should be glad, if it would not give you too much trouble, to have them within the last year or two?—I shall look the point up.

2268. Now, at Question 897, dealing with the question of limited owners, Mr. Russell asked you this: "Take the case of a limited owner? (*A.*) In the case of a limited owner where the limited owner's estate comes to an end after the 1st January 1883, all tenancies created by such limited owner come to an end at the same time, and if the new successor, that is, if the remainderman, or the next tenant for life, receives rent from those tenants, they become future tenants, and, of course, as such, they are excluded from the Land Acts"?—Yes.

2269. Now, the next question is this: "Now, let us be sure about this; do you think there are many such limited owners in Ireland? (*A.*) Well, of course, a very large number of Irish estates are in settlement, and are in the possession of tenants for life, and in other cases where they have either created the new tenancy or so altered the old one as to make it a new tenancy, that tenancy would be excluded on the death of the tenant for life." And, at Question 904, Mr. Sexton says: "I am not sure that we understand this yet. Do you mean that when a limited owner dies, when tenants, during the tenure of the limited owner, have applied to the Court and had a fair rent fixed, the death of the limited owner has placed them in the position of future tenants?" And you answer: "That has been held in Peyton *v.* Gilmartin." Now, I just want to make this clear about Peyton *v.* Gilmartin. Does not Peyton *v.* Gilmartin, and the principle laid down in Peyton *v.* Gilmartin, only apply to cases where the tenancy, upon which the judicial rent was fixed, was created by a tenant for life?—Yes, but I have made that clear, I think.

2270. That answer of yours to Mr. Sexton (904) is of a most general description?—I had present to my mind my previous reply to Mr. Russell. When I answered Mr. Sexton I clearly intended to make my reply apply to that.

2271. Supposing a tenancy is created by an owner in fee, will not that bind, not only that

Mr. *W. Kenny*—continued.

owner in fee, but everybody who claims under him?—Certainly; that is clearly stated by Mr. Justice Holmes in his judgment in Peyton *v.* Gilmartin.

2272. I think you said in one of your answers (I have not the exact reference) that you had had one or two cases in which tenancies had been created by limited owners, and in which of course, you were unable to give effect to the claim?—I said that the previous week, I think in Cavan, I had two cases where the point arose.

2273. This is your answer to Question 913: "I would not say that very many have been raised at present, but last week I dismissed two myself in Cavan on that point"?—Yes.

2274. I do not know whether you are able to refer us to any others?—By looking back through my notes I might find them out.

2275. Can you, from recollection, say that these cases are constantly, or at all, cropping up before you?—I have perhaps one or two every now and then, not oftener.

2276. No more than one or two in a year, when you say "every now and then"?—I would say I have more than that.

2277. Could you give us a percentage at all?—No, I could not; but of course they are very few undoubtedly.

2278. Very, very few?—That is to say, there are very few in which the point is raised.

Mr. *T. W. Russell.*

2279. Are there many in which it could be raised where it is not raised?—I think that in cases of estates that have been for a long time in settlement, undoubtedly, there would be a large number of cases in which it could be raised. Where you have a succession of tenants for life one following on the other for a long series of years, I think in cases of those estates, the question could be raised with respect to a great number of holdings.

Mr. *W. Kenny.*

2280. The creation of new tenancies by the tenant for life?—Yes; because even many of the tenancies in this case that were created originally by the settor have been so affected by the taking out of new tenancies under the limited owners as to bring them within the principle.

2281. But, in the ordinary run of cases, would it not be considered that the old tenancy was continued in the new?—No; if the old tenancy had been so altered by that very principle of surrender by operation of law, so as to make the old tenancy into a new tenancy, and that was done while the limited owner was in possession, then the tenants would come within it.

2282. Is it not a matter of extreme difficulty to prove such surrender; in Conroy *v.* Drogheda was it not a matter of extreme difficulty to prove it; the landlord was not able to prove it in that case?—The facts there were very clear. You must remember that was a case of a change of tenancy, which took place within a few years, and where the agreement had to be put in evidence, and where the circumstances surrounding the change in tenancy were present to the minds of both parties.

 2283. Would

Mr. *W. Kenny*—continued.

2283. Would the mere raising of the rent amount be sufficient?—No; not the raising of the rent, but the taking out of a lease, or any new tenancy that would be inconsistent with possession under the old tenancy.

2284. That is, if the tenant from year to year, during the lifetime of a tenant for life, got a lease from the landlord of his holding; that might operate as a new tenancy?—Quite so.

2285. But he would take the lease with his eyes open, and know what he was doing, would he not?—Certainly.

2286. At 1033, with reference to O'Brien *v.* White, and these Clare crag lands, Mr. Russell asked you this question: "That is to say, that if a Clare person has a farm which is very craggy, and if he digs with his spade in between the crags, and that is the only farm that he has, it is outside the Act, because, forsooth, it is a pasture holding: is not that what it means?" and your answer was "Yes;" does not that only apply to a holding where the valuation is over 50*l.*?—That is, provided the tenant does not reside thereon.

2287. Certainly; but, assuming the tenant residing on the holding, does it not only apply to tenancies the valuation of which is over 50*l.*? Quite so.

2288. So that if the tenant resides upon his holding, and has a farm of under 50 acres, he may till it as he chooses?—Certainly.

2289. Even in those craggy lands of Clare, if he resides on his holding?—Yes.

Chairman.

2290. Is that under the 3rd and 4th subsections of the 58th section?—Yes.

Mr. *W. Kenny.*

2291. Now, at No. 1395 (that is on No. 3, Tuesday's evidence), you were asked this: "Might I ask you, as a matter of public policy, whether you think it is a desirable state of things that 300,000 tenants should have a fair rent fixed, and that 250,000 (that is the number) should be subject to rents which, by comparison, are excessive?" and your answer is, "Of course, with reference to the second case you name, a large number of them, in my experience, have not come into court because they are getting perhaps temporary abatements. I know a large number of cases on which I have fixed rents for the last year, stayed out of court for ten years, as they were getting temporary abatements from the landlord." Now, would you be inclined to say that a very large proportion of that 250,000 who have not come in and got a fair rent fixed, have not come in because they are holding at what they regard as comparatively low rents?—Oh, yes, that is quite possible.

Mr. *T. W. Russell.*

2292. There is another point in that if you will allow me. I think there are at least 50,000 of the Irish tenancies, that are reported as tenancies, that are mere gardens, half-acre gardens, and that would not come under that Act at all?—Yes, a very large number of those half-million holdings are composed of holdings under one acre, and would probably be excluded from the Act on a variety of grounds of exclusion. If you looked at the return of the acreage of the holdings you could find that out.

Mr. *W. Kenny.*

2293. At 1622, on the question of town parks, you were asked: "If a person happens to live out of the town, it cannot be held to be a town park, but simply because he happens to live in town, it is held to be a town park." "Yes," you say; has not that been modified by the Act of 1887; I think, Cherry, page 391?—Well, it was settled, I think, in the case of Nelson *v.* Headfort, that a mere change in residence would not prevent the principle applying when the holding was in the occupation of a person living in the town at the passing of the Act of 1881.

2294. I want to direct your attention to the 9th section of the Act of 1887, to see what is the interpretation of it: "A town park shall not cease to be within the exemption contained in section 58 of the Land Law (Ireland) Act, 1881, by reason only of the occupier ceasing to live in the city or town to which it belongs, or in the suburbs thereof, or by reason only of such town park devolving upon or becoming vested in a person not living in such city or town, or in the suburbs thereof"?—Yes.

2295. Did that alter the existing law?—It practically affirmed the law laid down in Nelson *v.* Headfort.

2296. I want to understand exactly what it did. It affirmed the law laid down in Nelson *v.* Headfort, did it?—Quite so.

2297. Under Nelson *v.* Headfort; but under this section is there a necessity at present, in order to constitute a town park, that the holder should reside in the town?—Not at the time the rents have been fixed, but that the holder should have resided in the town at the passing of the Act of 1881.

Chairman.

2298. The date of the passing of the Act, is that, the time at which he should show his residence?—Yes.

Mr. *W. Kenny.*

2299. Either he or, I presume, his predecessor in title?—Yes, quite so; in fact the passing of the Act of 1881 is the period at which the status of all those tenants is looked to and judged.

2300. So that it is not a condition now of a holding being held to be a town park that the person who serves the originating notice should be a resident in the town or suburbs?—Oh, no, not at the present time.

Chairman.

2301. On whom does the onus of proof lie?—Of showing where you reside.

2302. Yes?—The landlord has to establish the three attributes laid down in the 58th section of the Act of 1881.

2303. On the landlord the onus is laid to prove the three statutory conditions?—Quite so; but the onus of proving the exception introduced by the 9th section of the Act of 1887 lies on the tenant.

2304. The

Mr. *W. Kenny.*

2304. The tenant serves his originating notice, claiming, of course, to be an ordinary agricultural tenant?—Yes.

2305. Then it lies on the landlord to show that he is outside?—To show that he possesses those three statutory requisites to make a town park.

2306. Questions 1636 and 1637 still deal with town parks: "As the law is, it leaves practically the owners of town parks at the mercy of the landlord; they are subject in eviction, are they not? (*A.*) Yes, they are outside the Act of 1881, and they have not got any of the provisions of that Act in their favour." Then Question 1637: "And the landlord can increase the rent as much as he likes, or put them out? (*A.*) He can deal with them as he can deal with the occupier of a town house." Is that altogether right? Would you not like to qualify that last answer, that he could deal with them as he would with the occupier of a town house?—They are specially excepted from the Act of 1881, except as regards its improvement clauses.

2307. Under the Act of 1870, have not they got special rights under the 15th section; are not they entitled to make a claim for improvements. "No compensation shall be payable under the preceding provisions of this Act in respect of (1) any demesne land or any holding ordinarily termed 'town parks,' adjoining or near to any city or town which shall bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof, or any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than 50*l.*, or any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides," and then it goes on (it is at page 169 of Cherry): "Provided that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under Sections 4, 5, and 7 of this Act." Does not that still enable the owner of a town park holding who has made improvements to claim under Section 4?—Yes, he is entitled to make any claims that he could have made under Section 4.

2308. Under Section 4, for improvements?—Yes, but I was there answering a question put by Mr. M'Cartan as to the right of the landlord to put out the tenant.

2309. I was only dealing with the generality of your answer. The generality tends to lead one a little bit astray. He puts it: "And the landlord can increase the rent as much as he likes, or put them out." And your answer is: "He can deal with them as he can deal with the occupier of a town house"?—Of course, it is difficult to avoid, in giving answers, being somewhat general. I have present to my mind the particular point that is put to me, and another might take a more general meaning from that

Mr. *W. Kenny*—continued.

which I say, and a meaning which I do not intend.

2310. There is no doubt that that section of the Act of 1870 does give them a claim?—Yes, and I would like to say I never intended to assert the contrary in my answer.

2311. Oh, no, certainly not; only the answer is a little general and misleading?—Possibly.

2312. At 1638 (I think this is in answer to Mr. M'Cartan) you are asked: "Do you not consider that the landlord has ample protection under statutory conditions in case he requires the land either for building purposes or in the interest of the estate; it says here: 'During the continuance of a statutory term in a tenancy, save as hereinafter provided, the Court may, on the application of the landlord, and upon being satisfied that he is desirous of resuming the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate, including the use of the ground as building ground,' and certain other things. Do you not feel that that is quite sufficient protection for the landlord, and that in the interests of the people of the town it should be deemed to be sufficient"? and your answer is: "It gives the landlord the power of taking up any portion of the land required for building." Has it not been decided that if the landlord wishes to resume the possession of a holding he must pay full compensation for it under the 5th section of the Act of 1881?—Yes.

2313. And has it not also been held (I think in the case of M'Farland *v.* Carre) that full compensation means what a tenant would get for the holding in the open market if it was set up for sale?—Yes, M'Farland *v.* Carre, reported in 17 "Irish Law Times," page 60.

2314. With reference to holdings outside the Act, at Questions 1776 and 1767, you say: "Then they decided" (referring to Drought *v.* Stubber) "that if the letting showed that it would be unhusbandlike not to consume the hay on the holding, then you were excluded, altogether apart from the terms of the instrument of letting? (*A.*) Yes. (*Q.*) That is the last decision, is it not? (*A.*) In fact it has come down gradually to regard what the Court of Appeal says is the proper use of the holding." But is not what the Court of Appeal have held this, that when they find that a particular user would have been user of the holding, they have come to the conclusion that this must have been in the minds of the parties when they entered into the letting?—Certainly.

2315. And that they must have contracted with reference to that particular user?—Certainly. Of course the words of the section are, "Let and used for the purpose;" that is, "purpose" is the important word in the excluding section.

2316. But the Court of Appeal, in fixing a particular user, or mode of user, upon the farm, do not decide that that was in the contemplation of the parties in the face of evidence to the contrary?—Oh, no; it is when they have no evidence that they assume, that the user of the

Mr. *W. Kenny*—continued.

holding shows what the intention of the parties was.

2317. In fact they settle the term of the contract?—Quite so.

Chairman.

2318. If the contract is silent about the purpose, they admit extrinsic evidence, do they not?—Yes, they admit extrinsic evidence as to the nature and character of the user of the land.

Mr. *Brodrick.*

2319. At Question 1381, Mr. Sexton asks you this: "I find scattered through your very important evidence, no fewer, I think, than 47 restrictions and exclusions," and he proceeds to name them; and you replied that you agreed with that. Could you give a schedule of the 47 restrictions stating how many cases have been affected by each?—You will see further on that Mr. Sexton asked me (I think in 1384) to draw up a list in a tabular form, which, of course, I mean to do; I have not had time yet to do it.

2320. You have not been able to do so yet?—No.

2321. Could you, in drawing up that tabular form, give the Committee any idea of the number of holdings in Ireland which have been effected by these restrictions?—I could not possibly; I have no machinery by which I would be able to find that out.

2322. Would you say that these restrictions had left a large number of holdings in Ireland outside the Act?—Well, Mr. Sexton there speaks of "restrictions and exclusions." The restrictions refer to restrictions in the claim for compensation for improvements; the exclusions, of course, are those that bar a tenant from applying under the Act at all.

2323. Would you divide the restrictions and exclusions into two classes?—Oh, yes.

2324. Into the class of those omitted on grounds of public policy by Parliament, and those omitted by judicial interpretation?—Yes, that might be done.

2325. Do you propose to include in your tabular statement the tenancies excluded deliberately by the Land Act of 1870?—I understand, that Mr. Commissioner FitzGerald, at the request of the Committee, is preparing a tabular statement of the numbers of cases excluded.

2326. Under each of these heads?—I do not know how far the Committee require him to have sub-heads, but he is preparing some tabular statement dealing with the excluded cases, cases that have been dismissed.

2327. Is it your contention, speaking broadly, that a large number of tenancies have been subjected to restrictions not imposed by the Land Act, but which have been brought about by judicial decisions contrary to the intention of the Land Act?—No; I never intended to say anything of that kind. I merely stated the fact in my evidence, and I would wish to make that clear; I was not saying that the courts in any way went beyond the intention of the Legislature; all I set forth was what the courts actually

Mr. *Brodrick*—continued.

have done. Of course it is for the Committee to consider how far that is consistent with the intention of the Legislature.

2328. What I want to arrive at is this: did you not in your reply to Mr. Sexton mix up, not merely holdings which have been made subject to restrictions by judicial interpretation, but also holdings which were deliberately excluded by Parliament without any question of interpretation?—No; I do not think I mixed them up. I was there referring to a very broad question of Mr. Sexton's, where he proceeded to classify my evidence of the previous day as regards the number of restrictions imposed—for example, by the 4th section of the Act of 1870, on the claim of the tenant to get compensation for improvements, and then he went on also, to classify my statement of the exclusion of the tenancies from the Act, both by judicial decisions, and by the specific section of the Act of 1881.

2329. Now let us try it by the question of the large pasture farms. At 983 you answered: "In the first one, the principle of the case of Leonard *v.* St. Leger Barry has been introduced very largely into that class of cases; that is, where a portion of the holding is non-agricultural the entire holding is excluded." Would you wish to modify that answer?—No; in what direction do you mean modify it?

2330. Do you wish to modify the answer, that "where a portion of the holding is non-agricultural the entire holding is excluded"?—No.

2331. Mr. Kenny has asked you a question or two with regard to one or two of these points. You say "That is laid down in Boyle *v.* Foster and that class of cases." What is Boyle *v.* Foster?—That is a case where a portion of the demise in a lease was a mill. That mill was burnt down subsequently. The tenant came into court to get a rent fixed. A very large portion of the holding was purely agricultural, and this mill was very much less in value as compared with the agricultural portion, but the mill portion being non-agricultural, the entire holding was excluded.

2332. Was not 80*l.* the rent of the mill which formed part of the holding; was not the judgment expressly based upon the fact that a substantial portion of the holding was non-agricultural?—Yes.

2333. Therefore it would be erroneous to generalise from Boyle *v.* Foster, and to assume that if a small portion of a holding was non-agricultural therefore it would be excluded?—No; in fact I think the courts have generalised in the direction of holding that a very small portion is sufficient to exclude; for in the case of Wall *v.* Eyre an extremely trivial portion was non-agricultural, and the entire holding was excluded.

2334. What were the proportions in that case?—In Wall *v.* Eyre the demise of the farm included the tolls of a fair, and it was proved in evidence that the tolls of a fair in that case were practically trivial, a few shillings at each fair; that in fact, the tolls had become practically non-existent, and the holding was excluded upon that principle.

2335. Did

Mr. *Brodrick*—continued.

2335. Did not Lord Justice FitzGibbon expressly state in Boyle *v.* Foster that it did not follow that because part of the holding was of a special character the entire holding was outside; and has not that judgment been followed in a great number of cases?—He held, as far as I remember, the judgment at this time, that to have certain non-agricultural elements on a holding, which may be necessary for the proper working of that holding, did not necessarily exclude it. You may have even a scutch mill, which may be very necessary for the holding, and although the scutch mill may be non-agricultural, still in such a case it would not necessarily follow that you would exclude the entire holding.

2336. If the impression left by your answer was, as I think it was, that in nine cases out of ten where a portion of the holding was non-agricultural, the entire holding was excluded, that would not be accurate; you answered with regard to Drought *v.* Stubber; in that case was it a fact that the tenant was only allowed to break up 40 acres out of 195?—Yes, the principle of Drought *v.* Stubber is entirely different to that of Boyle *v.* Foster. They are based on entirely different principles in law.

2337. Is it not the fact that less than one-fifth of the holding could be broken up, and that it was held to be inside the Act?—Yes, that was a pasture holding. Boyle *v.* Foster is a non-agricultural holding case, and entirely different principles were applied. You cannot apply the principles of Boyle *v.* Foster to Drought *v.* Stubber.

2338. Speaking generally, is it not the fact that where no substantial portion of the holding can be broken up, it has been held, in Drought *v.* Stubber, and again in Holmes *v.* Lawder, that the holding is within the Act, and can be the subject of a fair rent?—Yes, but since Holmes *v.* Lawder, the courts have very largely gone upon a different principle of interpretation of that section. Since the case of Rivers *v.* Hamilton, and down to the very last case I referred to on the last day, I think McComick *v.* Loftus, the courts have gone very much more on the general character of the user of the holding. At the time of Drought *v.* Stubber they held very largely by the exact quantities that were permitted to be broken up under the lease or contract.

2339. It would, however, would it not, be erroneous to suppose that the Act has pressed hardly on pasture holdings where a small amount could be broken up; in a great majority of these cases it would be erroneous to suppose that the courts have held that they were outside the Act, would it not?—If I draw up for you a tabular statement, as I think I can, dealing with the proportions that were held to exclude a holding, you can very easily judge of that, and if you wish I shall be happy to do it.

2340. I think it will be very useful?—Yes.

2341. Referring for one moment to Crookshank *v.* Law; you put that forward, but I presume you did not put it forward as a typical case?—No; I merely put that forward as a case where a certain small portion of land which, standing by itself was agricultural, that is, where there was no house on it or nothing on it which

Mr. *Brodrick*—continued.

would make it non-agricultural, being taken by a person for the purpose Mr. Kenny brought out, by a solicitor, or a resident in a neighbouring house for the convenience of his residence, it was held to be taken for non-agricultural purposes and excluded.

2342. You would hardly contend, would you, that the grievance of a solicitor residing close to the town of Portrush, who wanted to take three acres of land for his own purposes, was a grievance of an agricultural tenant?—I clearly guarded myself; I never alleged it to be any grievance; I merely quoted it as a case illustrative of the law. As to its being a grievance, I did not wish the Committee to draw any conclusion.

2343. Your answer was this: "It has been also held in the case of Crookshank *v.* Law that a taking of three acres of agricultural land by a man who wanted to add that on to his residence would be outside the Act"?—Yes.

2344. That rather conveyed the impression, did not it, that he was a small tenant who had taken three acres of agricultural land, and wanted to farm it to make his living by it. I wish just to get that clear?—Yes, that is so. I did not mean to put it forward at all from that point of view. As I say, I quoted it as an illustration of the principle on which the courts proceed, that you may exclude a piece of land of that character if it is taken under certain circumstances, and for a certain purpose.

2345. You did not put it forward as one of those classes of case for which the Act was specially intended, an agricultural tenant?—Oh, no.

2346. Then with regard to O'Brien *v.* White, as to which Mr. Kenny asked you, it is a fact, is it not, that the number of these farms in the county of Clare which are above 50*l.* valuation is not large?—Of course I do not know what the numbers are.

2347. Are you aware that out of 15,700 holdings in County Clare, only 988, or about one-sixteenth, are over 50*l.* valuation?—I am not aware, but I take it that that is so.

2348. Then it would hardly, under these circumstances, be true to say, would it, what you did say in answer to a question put by Mr. Healy. He asked you (*Q.* 1030): "Was not that an enormous decision affecting the whole county." This is O'Brien *v.* White. You would hardly call that "an enormous decision affecting the whole county," would you?—I do not think I said that, did I? In my answer I did not affirm that.

2349. Are you aware that your answer has been so taken in the newspapers in Ireland, or do you not read them; I thought it just as well to ask the question to remove that idea; you would say that this decision was one of very limited application, would not you?—On the figures you give there of the number of holdings that that could possibly apply to.

2350. Do you know what the proportion of the whole number of holdings in Ireland valued at over 50*l.* is to the others?—No, I do not.

2351. Would you be surprised to know that

Mr. *Brodrick*—continued.

it was about one-twelfth of the whole, or about 40,000*l.*?—Yes, that is probably correct.

2352. To suppose that this was "an enormous decision affecting the whole county" would be absurd; it affects a limited class of holdings only?—Undoubtedly.

2353. With regard to town parks, you have told Mr. Kenny, I think, substantially, that you do not maintain the idea that half-a-dozen houses collected at the cross-roads would be held, if they created a demand for accommodation land, to be town parks?—No; the only difficulty I think is what limit of population you could come to. We have no guide as to how far down we may come.

2354. You have mentioned the town of Dundrum as being a very small town for town parks with a population of 376?—Yes.

2355. Would you consider that Dundrum was only a village, or would you consider it a town of some importance in its way?—I know Dundrum pretty well. I have been there and I have fixed rents about it. It is rather a typical case of a small town without any particular trade, situated close to the sea; but I can show you the map of it, and you will see how it lies.

2356. Are you aware that some 30,000 tons of coal are shipped there every year?—No, I do not know the figures.

2357. Do you know that a pier has been recently built there, not long ago?—Yes, I have seen that pier.

2358. I mean in its surroundings, do you know it as a fact, or would you say that the boundaries at present of a small town represents the whole of the inhabitants, or are not those boundaries sometimes placed very close, and do not include the whole population?—That is possible in some cases. In many of these cases they take in the population of the electoral division in which the town is situated.

2359. That does not always include the whole of the houses, does it?—It varies very much. In some cases they may leave out some of the suburbs; in others they may include a large portion of the surrounding country.

2360. Do you regard the withholding of town parks from the Acts as being prejudicial to the towns in which they are?—I think, as is shown in the sections dealing with them, Parliament considered it would be prejudicial to admit all holdings that might be classified as town parks to the benefits of the Act, and very specific provisions have been inserted which will prevent that inclusion taking place, so as to injure the growth of the town.

2361. In your experience, in cases which have been known to be town parks, have you not had to deal with a large number which were intimately connected with the development of the town?—Yes.

2362. Would not you say that in those cases, to fix a purely agricultural rent would be a very hard thing upon the landlord?—Yes.

2363. For accommodation land?—Yes.

2364. Is it not the case that where the landlord wishes to build either small houses, or to make any improvements near a town, the town park is the only opportunity he has of doing so?—I think it is not of so much value as a matter of building ground, as it is of facilitating the other tenants he has in the town, and enabling them to have small plots of land for the supply of their houses in the town. In that way it is very convenient to have those town parks.

2365. And for those purposes, obviously, the landlord is the proper recipient of the rent, is he not?—Of course, he is the owner.

2366. If there is an increased value, it naturally goes to the landlord?—Naturally.

2367. Therefore, if you were to fix an agricultural rent, as has been suggested, on a large number of these town parks, you would be doing great injustice to the landlord, would you not?—Of course you might apply that observation to any of the rents that we fix.

2368. It has been suggested that these small towns have been made the subject of town parks; indeed, I believe you said just now even some smaller ones than Dundrum and Five Mile Town?—Yes.

2369. Do you suggest that towns which have not been towns at all have been made the subject of town parks?—What I think is, that now it is very difficult really to know what is a town; it is very difficult to know how far down you are to come. I know I would find very great difficulty myself in determining what is a town.

2370. Now, take Five Mile Town—you have mentioned Five Mile Town. Would not you call Five Mile Town a town in the fullest sense of the Irish use of the word?—Yes.

2371. I mean it is a town with a market place, and a bank?—Yes, they call all those collections of houses, towns.

2372. It has a fort, houses, police barracks, churches, schools, hotels, and all the concomitants of a town, has it not?—Quite so.

2373. It has been known as a town for some 200 years?—Yes.

2374. And it is an increasing town, is it not?—I believe so.

2375. I would ask you then, in that case, why you selected Five Mile Town as a town, and quoted the small population; did you intend by that to insinuate that it should not be a town?—Certainly not. The reason I quoted Five Mile Town was, that Five Mile Town was the first case decided by the Land Commission under Caledon *v.* Archer, in which they came below the limit of population that had previously been adopted. Previously they had adopted the population test for a town which is not less than 600. Five Mile Town was the first case in which they came below that.

2376. Then I do not understand you in any way to contest their decision?—Certainly not.

2377. You would not say it was desirable to go back on the population test?—Well, that is a matter that I really have nothing to say to.

2378. I think just now you admitted that a town park, as you put it in your answer to Question 1622, is not to be decided simply by whether a person happens to live within the town. You are asked: "If a person happens to live out of the town, it cannot be held to be a town park; but simply because he happens to live in town it is held to be a town park?" and you say "Yes."

You

Mr. *Brodrick*—continued.

You have modified that answer, have you not?—What I explained was, that I was referring to the time at which the status of the tenant was to be decided, namely, the passing of the Act of 1881. That is the crucial point at which we must decide whether he was living in the town or not.

2379. At present, under the Act of 1887, your answer would not be quite correct, would it?—I intended my answer to refer to the passing of the Act of 1881, and in that sense it would be quite correct.

2380. On the question of improvements, you mentioned an impression on your mind that the tenants had made improvements in certain cases and were unable to prove them. Now, with regard to the converse of that: you are aware that there are a certain number of English-managed estates, so-called, in Ireland; and those English-managed estates are subject, are they not, to the improvements having been made and substantially maintained by the landlord?—That is so.

Chairman.

2381. Is not that the meaning of an "English-managed estate"?—Yes.

Mr. *T. W. Russell.*

2382. Do I understand that you are aware of these estates being in Ireland?—What I meant was, that I am aware that there are estates in Ireland on which it is alleged that the improvements were made and maintained by the landlord.

Mr. *Brodrick.*

2383. Can you mention any estate in which the landlord has been able to prove that?—It has been raised so seldom before me, that I cannot. I only know of one occasion on which that point was raised before me; that was a case on, I think, Mr. Talbot Crosby's estate in Kerry. There it certainly was proved that the improvements were made by the landlord, and it was also proved that for a time he maintained them, but then the proof broke down; within the last 20 years or so, he had ceased to maintain them; consequently we could not decide that it was an English-managed estate.

2384. In fixing a fair rent in a case like that, I suppose you would have to leave that out of account, unless the landlord could prove that he had maintained them?—Of course, the application was to refuse the application of the tenant, and dismiss him on the ground that he had no right to apply, it being an English-managed estate. We held he had a right to apply; but then in fixing the rent, we were bound to take into account the fact that the landlord had made the improvements, and that he had maintained them up to a certain point.

2385. Where a landlord can prove that he has made the improvements, and is unable to prove that he has maintained them, even though the tenant has only made trifling repairs or additions to the improvements, as a matter of fact, the landlord loses the credit for his expenditure?—No; not the credit for his expenditure; but it bars the landlord from relying upon the exclusion section. He is entitled to have credit for the improvements in our fixing the rent, that is, we have to take into account on fixing the rent, the fact that the landlord has made the improvements and partially maintained them.

Mr. *Brodrick*—continued.

2386. Then you would be able to give credit in that case where the landlord has given slate and timber?—Certainly.

2387. You give him the credit?—Undoubtedly.

2388. He loses the right to have the application dismissed?—He loses the right to have the application dismissed.

2389. With regard to books kept by the landlord, I think you have told us that you have found on the large estates that books could be produced?—Yes, as far as I remember, on most of the large estates books are carefully kept, in which allowances for slates, timber, or drainage are entered against each tenant.

2390. But in cases where a sale has been made, and the landlord has purchased the estate, have you found that books have been transferred and that the landlord could go back?—Where a sale has taken place, and where the books have not been transferred, as a rule, no application is made on a claim for that class of allowance; whether they are made or not, we have no means of knowing, for the present landlord, I suppose, not having the books, does not make the claim.

2391. As a matter of fact, in your experience where an estate has been bought, have books been presented to you on claiming improvements?—The presumption is that they are the landlords in that case. The big estates I am speaking of, in the north of Ireland and other places, have been in the possession of the landlords for generations, and I know of none of them that have been sold within recent times, say, under the Landed Estates Court Act, so that the question really never arises. I cannot recall any big estate that was sold in that way, with one exception, that was the estate of Mr. Richardson, in Armagh, where he bought from Lord Powerscourt.

Mr. *T. W. Russell.*

2392. Mr. Bruce?—I have not fixed rents on Mr. Bruce's estate.

Mr. *Brodrick.*

2393. Then, with regard to this impression on your mind that tenants had made improvements for which you have been unable to allow, do you apply that to improvements made under a lease?—Made under a lease.

2394. Do you or do you not mean that improvements made under a lease ought not to hold after the termination of the lease, that the lease is not to be held to be a consideration for them?—In a great number of cases where we are confident, or where we are satisfied that the tenant has made the improvement, we disallow them on the ground that they were made under a lease which excluded such improvements.

2395. Is not the present law in Ireland as to improvements made under a lease, practically the same as for improvements made under a lease for building

Mr. *Brodrick*—continued.

building or any other purposes in Great Britain?—I take it so.

2396. That is to say, if you suggest that improvements are not compensated by the lease, that equally applies to the general law; certain improvements are made under a lease, and nothing is allowed for them at the end of it?—Undoubtedly.

2397. If you take houses in any part of Ireland, you may enter upon a building lease on those terms, may you not?—Quite so.

2398. And the position of the tenant taking a lease of agricultural land is practically similar?—Quite so. I would like to say again I do not challenge the right or the wrong of it; I merely stated the law.

2399. Mr. Russell asked you in Question 795: "Supposing the lease expires and the tenant has covenanted not to claim for improvements on quitting his holding, supposing he does not quit his holding, that a new arrangement is made, am I to understand that that tenant, not quitting his holding, but being subject to the new arrangement, is liable to have the rent put on every farthing he has spent during his previous tenancy?" And you reply, "Yes; this is governed by the case of O'Neill *v.* Cooper, which is not reported." Have you known any tenant who has suffered disadvantage in this way?—That is, that he is liable, not quitting his holding, to have rent put upon improvements made under his previous lease.

2400. The question is, he "is liable to have the rent put on every farthing he has spent during his previous tenancy." I mean with regard to that, have you known any tenant who has suffered in that way; have you known a case?—I have very frequently myself imposed rent on improvements made under a previous lease, where the tenant has not quitted his holding, very frequently; in fact, I think I can give you the file of a case here where that was done.

Mr. *T. W. Russell.*

2401. Could you give us that case; have you got it?—I know that that is quite a common practice.

Mr. *Brodrick.*

2402. Can you give us the case?—I will just see whether I have got the file here. I have got the file in O'Neill *v.* Cooper here, it is not a reported case, but I have got the file here which will show you how it occurred. Here is the file in O'Neill *v.* Cooper.

Mr. *T. W. Russell.*

2403. Where was that?—That was a County Dublin case. I have another file here, I see, in a County Meath case.

2404. Give us the Meath one first. Is the Meath one reported?—Oh, no; none of these are reported cases; they are just files I happen to have.

2405. Let us have the Meath file and then the Dublin one. You act in Meath yourself, you know?—Yes.

Mr. *Brodrick.*

2406. Did you propose to quote a case?—I said, I have actually the files here of cases where that has been done, namely, where rent has been put on improvements made under a lease.

Chairman.

2407. I understand you have two cases there, which will illustrate that?—Yes.

2408. One is a Meath case, the other a Dublin case; give us the Meath case first, and then the Dublin?—This Meath case is the case of Dyas, tenant, and Scott, landlord. It is a case under a lease for a term of 35 years at a yearly rent of 220*l.*

Mr. *W. Kenny.*

2409. What is the date?—The date is the 1st November 1879. In that case I see from the pink schedule that "the tenant was bound by his lease to expend 250*l.* on drainage. He has done so, and more. At the inspection the agent of Mr. Scott stated that he had been satisfied of this." I see that we there allowed him for no improvements.

Chairman.

2410. When you say he had "done so, and more," is that the allegation, or your finding?—That is our finding.

Mr. *Brodrick.*

2411. Did this lease begin or terminate in 1879?—It began in 1879.

2412. Then you proceeded to fix the rent under the Leasehold Act?—Yes.

2413. Under what Act was it?—The Act of 1887.

Mr. *W. Kenny.*

2414. Will you give me the acreage, please?—Yes; 158 acres, 2 roods, 26 perches.

2415. English or Irish?—Statute.

Mr. *Brodrick.*

2416. What did you fix the rent at?—We fixed the rent at 177*l.*

2417. Were you appealed against?—Yes.

2418. What was the result?—The appeal rent was fixed at 185*l.*

2419. And you say you allowed nothing for drainage?—We allowed nothing for drainage.

2420. Do you know what the previous rent, before 1879, was of that holding?—I shall just see (*referring to the documents*). There was no evidence of any change in rent.

2421. The assumption would be, would it not, that the tenant got in 1879 the holding for 220*l.*, at a lower rent than he would otherwise have got it unless he had undertaken to expend 160*l.* in drainage?—There was no change in rent.

2422. The old rent, being presumably at that time a fair rent, that is to say, the tenant being willing to pay it, would you consider it fair that the rent that you should fix should exclude the drainage which he undertook to do?—Well, as I said before, as a matter of fairness I prefer not to go into that; I merely say what we did. It is a matter of the policy of the Act as to whether it is fair to exclude the drainage or not.

2423. At the same time you have given rather a strong

Mr. *Brodrick*—continued.

a strong expression of feeling that the impression on your mind is that tenants have been deprived of improvements where they ought to have got the benefit of them?—Oh no; I said they have been deprived of improvements, but I did not say whether they ought to have got them.

Chairman.

2424. You have given us the Meath case; now will you give us the particulars of the Dublin case?—This Dublin case is a case of Mr. Kane's Commission. The Dublin case is a case of O'Neill, tenant, *v.* Cooper, landlord. It is also a lease case. The lease was dated the 28th November 1876, for a term of 31 years, at a rent of 218*l.* 14*s.*

Mr. *W. Kenny.*

2425. What is the acreage?—The acreage was 70 acres 3 roods 17 perches. The rent was fixed at 170*l.* There was a case stated, I see on the file, but apparently not proceeded with, in which the question was raised as to the right of the tenant to get an allowance for improvements.

Mr. *T. W. Russell.*

2426. What were the improvements proved?—The tenant claimed to have spent on buildings and improvements a sum of 1,613*l.* prior and subsequent to the expiration of the lease of 1831.

Mr. *W. Kenny.*

2427. Is this a previous lease?—This was a previous lease, and the landlord raised no question as to the amount of this expenditure, contending that the effect of the decision in Adams *v.* Dunseath was to exclude them from the operation of Section 8, Sub-section 9, of the Land Act, 1881, by reason of the following covenant in the lease. Shall I read the covenant?

Chairman.

2428. If you please?—"Whereas the lands and premises hereinbefore mentioned and hereby demised are not subject to the Ulster Tenant Right custom or any other usage mentioned in the Landlord and Tenant (Ireland) Act, 1870, and are valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not less than 50*l.*, the said Joseph O'Neill doth hereby for himself, his executors, administrators, and assigns, covenant and agree with the said Austin Irwin Cooper, his heirs and assigns, that at the expiration of said term, or other sooner determination of this demise, or at any other time whatever, he, his executors, administrators, or assigns, will not make or shall not be entitled to make any claims under the said Landlord and Tenant (Ireland) Act for improvements, disturbance, or other cause whatever, and that these presents and this covenant and agreement on the part of the said Joseph O'Neill shall be good and sufficient bar to any such claim both at law and in equity."

Mr. *W. Kenny.*

2429. Is that the lease of 1876 or 1831?—This must be the lease of 1876.

Mr. *Brodrick.*

2430. The previous lease was a 45 years' lease?—The lease was dated 28th November 1876, and was given in consideration of a sum of 800*l.* fine paid to the landlord. There was a fine of 800*l.* paid to the landlord for the second lease, that is the lease of 1876.

Colonel *Waring.*

2431. What was the rent?—Under the old lease? The rent under this lease was 218*l.* 14*s.*

Mr. *Macartney.*

2432. What was the rent under the lease of 1831?—The rent, apparently, was 175*l.*

Mr. *Brodrick.*

2433. Would you like to give us another case?—I just happen to have this.

2434. In fixing the rent in that last case you were unable to allow for the expenditure in buildings admitted since 1831?—Yes.

2435. What was that expenditure; what had been put up; have you got that on the notes?—No, we have only got the amount of money which was expended.

2436. Have you any knowledge whether it was expended in 1831, or at what subsequent period?—No.

Mr. *T. W. Russell.*

2437. You say that you were not able to allow for that expenditure on the part of the tenant. May I ask you this: In assessing the rent did you put rent on the buildings or on anything that he had done?—The case that was stated (I am reading from the case that was stated to the Court of Appeal, but not proceeded with), says: "The Sub-Commission yielded to the landlord's contention as to the effect of this covenant, and as appears by the schedule to their order, gave the landlord credit to the extent of 25*l.* a year for all improvements made by the tenant applicable to such an agricultural holding as the one in question, and fixed the fair rent at 170*l.*"

Chairman.

2438. The rent was put upon these improvements, was it?—Yes, that is so.

Mr. *T. W. Russell.*

2439. To the extent of 25*l.* a year?—Quite so.

2440. Which the landlord did not attempt to prove were not made, but relied on Adams *v.* Dunseath?—I have the schedule here of the lay Commissioners, which sets forth the class of the improvements. The improvements apparently were, "Drains in 21 Irish acres made during and previous to the lease"; also "Substantial dwelling-house, with extensive farm buildings, all in excellent repair, with gate piers, yard walls, &c., executed during currency of lease at a considerable cost, and in excess of what would be necessary and suitable to the holding, 25*l.*"

2441. In excess?—Yes. This is the report of the lay Commissioners.

Mr. *Brodrick.*

2442. Drains made during the course of the previous lease you would hardly maintain, would you,

Mr. *Brodrick*—continued.

you, would be worth the same amount as when they were made?—I think, as I have stated before, some drains might come to an end as regards value in 10 years' time; others going on to 40 years; you cannot make a general statement with regard to them; it depends on the particular case.

Mr. *Fuller.*

2443. May I ask whether there was any covenant in this lease that he should make these buildings, the lease of 31 years?—Were there any covenants set out that he should make the buildings?—No; the covenant that I read for you was that the tenant should not claim for them.

2444. What I mean is this: the tenant's claim for improvements and buildings amounted to 1,613*l.*?—Yes.

2445. Were there any covenants in the lease that the tenant should construct those buildings?—No, there is no covenant alleged on the case stated.

Mr. *Macartney.*

2446. In either lease?—I have not got any information with regard to the first lease; it only refers to the second one.

2447. I understand that all these improvements were made before the lease of 1876 was granted, according to the claim of the tenant. He claimed 1,600*l.* for improvements prior and subsequently to the lease of 1831; that is quite clear, I think?—Well, the lay Commissioners report with regard to drainage that they were made during and previous to the lease.

Mr. *W. Kenny.*

2448. Of 1831?—No, that is dealing with the lease of 1876.

Mr. *Macartney.*

2449. I understand they found drainage; there were certain drains made on the farm which they said were made during the lease of 1876?—Yes.

2450. But the claim of the tenant was for 1,600*l.* for buildings and improvements made prior and subsequent to 1831; what I want to know is whether all his claim, or any portion of his claim, came into the period covered by the lease of 1876?—Oh yes, because the lease of 1876 did not come into operation for some years after; it did not come into operation until the expiration of the lease of 1831, which was a lease for lives.

2451. Of course I take it that the lease of 1876 did not come into operation until the lease of 1831 ceased to operate?—But the lease of 1831 did not cease to operate in 1876.

2452. When did the lease of 1876 come into operation?—Apparently not until 1881 or thereabouts; 1883, I think, it came into operation.

Mr. *W. Kenny.*

2453. What was the term of the lease of 1831; I do not think you told us that?—It was a lease for three lives, made on the 31st October 1831.

Mr. *Brodrick.*

2454. Was one life left in 1876?—Yes, apparently.

2455. Then the landlord granted a fresh lease?—The lease of 1876 was a lease made in reversion, the tenant having previously held many years under this lease of 1831.

2456. I presume the landlord granted the second lease as a valuable consideration to the tenant?—Well, in law that would be the presumption.

2457. And in consideration of the fine then paid?—Yes.

2458. The tenant paid 800*l.*, did not he?—Yes, as a fine.

2459. The tenant paid 800*l.* in 1876?—Yes.

2460. He thought it worth while before the expiry of his old lease to secure himself a new lease by that payment?—Yes.

2461. Therefore he regarded the new lease as a valuable consideration?—Apparently so.

2462. I presume that if he had tried to sell his interest that would have increased the value of his interest?—Making a new lease, because, as the law then stood at the expiration of his lease, he would have had no claim to any duration of occupancy. The making of a new lease was a matter undoubtedly of very considerable importance to him.

2463. By the payment of 800*l.* I suppose we might assume that the tenant bought something which he would be able to sell for a higher figure?—Yes; that very question of fine was one of the questions stated in this case for the consideration of the Court of Appeal, as to whether the fine should be taken into account in fixing the rent or not, and that was the case, I think, referred to here on a previous occasion. This very case is a case where Mr. Justice O'Hagan held that the fine should be taken into account, but that question never went on to the Court of Appeal for some reason.

2464. You, I understand, decided this rent?—No, it was Mr. Kane decided it.

2465. But a fine was taken into consideration?—I know Mr. Justice O'Hagan said it should be taken into consideration.

Mr. *W. Kenny.*

2466. If I do not interrupt you, under the 21st section, a tenant, if he thought the terms of the lease of 1876 were unreasonable or unfair to him, or if the lease was forced upon him by threat of eviction or undue influence, could have applied to the Court to set it aside?—Yes, there was no question of that kind raised in that case at all.

Mr. *Brodrick.*

2467. It is obvious from your answer that rent has to be fixed on improvements which have been made in consideration of a lease?—Yes.

2468. Did you include that in your answer, that the impression on your mind was that the tenants made improvements for which they were not compensated. That was your reply?—The word "compensated" there I used probably not in its legal sense, but in the general sense put to me in the question.

2469. That

Mr. *Brodrick*—continued.

2469. That is to say, when they came before you you were unable to give them money compensation for what they had expended ?—Quite so.

2470. Under a lease ?—That is so; we had to hold—or we had to hold under the law—that the conditions of that 4th section of the Act of 1870 were compensation.

2471. You held that they were compensation ?—Quite so.

2472. But you did not mean to convey by your answer to Mr. Kenny that they had received compensation ?—Certainly.

2473. And that you were not able to give them any ?—Quite so.

2474. It is a possibility, and a matter of fact, is it not, that in many cases the tenant has regarded the lease, or the terms of the lease, whether in rent, or otherwise, as being a compensation for the improvements he made ?—Yes, in cases of leases before the Act of 1881 I would say that was largely the case.

2475. Now, with regard to the question of 20 years; I want to get quite clear what is the position with regard to the 20 years' improvements: do you mean 20 years from now, or does not the presumption in favour of the tenants with regard to improvements date back 20 years prior to the Act of 1870 ?—With regard to presumption it dates back to 1850—that is 20 years prior to the Act of 1870. That is under the 5th section of the Act of 1870; but the 20 years' rule in the 4th section is a different one; it dates back to the year 1870.

2476. The presumption, therefore, is in favour of the tenant. You are able to take into account improvements which were made even as long ago as 44 years ?—No. We can only take into account improvements under the following section: —"A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say: in respect of any improvement made before the passing of this Act, and 20 years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land." Under that clause we can only give the tenant credit for improvements that have been made since 1870; but the presumption section (that is the 5th section) is dealing with a different state of things altogether. There it provides that the presumption shall not be in favour of the tenant where the improvements that are claimed were made 20 years or upwards before the passing of the Act.

2477. That is to say, that as regards improvements made more than 44 years ago, the presumption is in favour of the landlord ?—Quite so.

2478. But what improvements, do you think, except permanent buildings, and reclamation of waste land, are those excluded from the presumption ?—Yes; they would be barred by that presumption if they were made before 1850.

2479. What improvements do you think a tenant could reasonably claim more than 44 years ago; in what respect do you think he is damaged by the presumption being in favour of the landlord ?—It is mainly buildings and reclamation; practically those include the entire improvements that he would be barred from claiming by that rule.

2480. With regard to limited owners, you told Mr. Kenny, in fact, you gave evidence at the beginning of to-day's sitting, with regard to the exact bearing of Peyton *v.* Gilmartin. Can you tell us at all what number of future tenancies have been created in this way ?—No; I could give you no idea.

2481. You decide a case or two from time to time; you will not tie yourself down beyond that ?—Yes; quite so.

2482. The cases are very few compared to the mass, are they not, in which a new tenancy has been created, and therefore a limited owner can get rid of fair rent ?—I would say they are comparatively few as compared with the mass or number of cases of tenancies that are held under such estates; that is to say, the great mass of the tenancies have been created by the settler of the estate, the owner in fee who settled the estate, and it is only where those tenancies by surrender, by operation of law, or by some other means have been changed into new tenancies that the question would arise, or in the case of absolutely new tenancies created by the limited owner.

2483. I suppose a good deal of fraud might be committed, might it not, in the case where the limited owner was making a new tenancy without regard to the interest of a remainderman ?—Having regard to the legislation in the Settled Land Acts and in certain sections of the Act of 1870, a larger power is given to limited owners of dealing with their property than the fixing of the fair rent. I am not sure that there would be much of grievance from the likelihood of fraud. You must remember that, of course, the court would have the fixing of the fair rent, which makes it very different from the limited owner himself having power to fix the rent.

2484. Would you think it your duty as the legal Sub-Commissioner in settling the rent to take action to prevent the limited owner taking a large fine and fixing a very low rent, or agreeing to a very low rent, as a judicial rent ?—Of course as the law now stands, if he did take a fine it would not in any way injure the remainderman, because we cannot take a fine into account, so that we should fix the rent irrespective of the fine altogether.

2485. Do you mean that if a fine was taken it would have no effect on the property ?—No; the limited owner may take a fine and put it into his own pocket, and that will not injure the remainderman, because we will put as high a rent on the holding as if the tenant had never paid the fine.

2486. Suppose landlord and tenant come to you and say: we have agreed that the rent shall be 20*l.* for this farm, and this should be the judicial rent, have you then to go into the exact state of the holding and to decide over the head of the agreement of the parties ?—In that case we have nothing whatever to say to it. That is an agreement between landlord and tenant which is not fixed by the court at all. That raises, of course, a very important question, namely, that in dealing

Mr. *Brodrick*—continued.

ing with tenancies created by limited owners it might be absolutely necessary that the court should look into the fixing of the new rent to see that it was a fair one. It undoubtedly might, as you suggest, open the door to a grievance if the limited owner and the tenant were, between themselves, entitled to make an agreement fixing the rent; there the grievance might arise.

2487. But will you tell the Committee what would be the course in a case of this kind: The landlord has had land in his own hands; he is a limited owner; he wants to make a letting for his own benefit rather than that of a remainderman; he takes a large fine and he comes, after agreeing to a rent, to give you evidence that the farm is of the value of 50*l.* a year; and the tenant giving evidence that it is of the value of 45*l.* a year; the real value of that farm being, say 150*l.* a year, the value of the holding may be three times the value, and there may have passed a large sum of money: what would be your action in that case, what would you do?—I have never had, of course, such a case, but I am quite clear, from my experience of other cases, that in such a case the lay Commissioners would go out and see the holding themselves; they would see the value of it; they would see that the real value of it was three times greater than the value even put upon it by the landlord; and undoubtedly we would refuse to fix it at that figure on the evidence of the landlord's valuer.

2488. You simply mean from that that they would have to get within measurable distance of a colourable rent?—We certainly would refuse to be a party to fixing such a rent.

2489. In Mr. Justice Holmes' judgment in Peyton *v.* Gilmartin he used the words, did he not, that the principles on which his judgment was based had the effect of confining within very narrow limits the little revolution to which Mr. Walker had referred?—Yes.

2490. Was it not decided that if the remainderman put the tenant who had been put in by the limited owner; if he allowed him to remain in possession even eight months that was held to be the adoption of a pre-existing tenancy which had been created by a deceased tenant for life?—Undoubtedly the remainderman may adopt the previous tenant; but then it will be adopting him as a new tenant.

2491. What I mean is this: Does not the fact that the remainderman (even for the shortest possible time) extends the tenancy practically mean an adoption of the tenancy?—But it is an adoption of the tenancy as a new tenancy.

2492. I am speaking of a case where the tenancy may possibly be colourable. Is it not the case that the whole idea of the law is that unless that tenancy is immediately questioned by the remainderman, it must be considered to have been adopted?—As I say, it is considered to be adopted as a new tenancy, that is, the remainderman cannot set up the tenancy in its previous strength; he cannot set it up as a tenancy good against himself.

2493. Was not the effect rather of your answer, and even on your suggestion this morning, that there were a very considerable number of cases where the remainderman might create a future

Mr. *Brodrick*—continued.

tenancy on the death of a tenant for life?—Yes. What I said was I think that in estates which happened to be in settlement for a very long period, it was almost inevitable that such changes as the giving of leases, or the alteration of any existing yearly tenancy, in any way that would make it a new tenancy, should take place to rather a considerable extent, and in such changes that question would arise.

Colonel *Waring.*

2494. Excuse my interrupting you; are there, as a matter of fact, new tenancies constituted in that way to any great extent? Surely it is held that a tenant coming in as a tenant-at-will, an existing tenant-at-will of a predecessor in title, does not constitute a new tenancy; you know leases are very seldom given now?—Of course we are talking mainly of changes that took place before the Act of 1881, when the doctrine of implied surrender ruled, and where the taking of a tenancy which was inconsistent with the previous tenancy was in effect a new tenancy.

Mr. *Brodrick.*

2495. You mentioned the giving of a lease; is it not a strange suggestion that leases are being forced upon tenants in order to break the present tenancy and put them outside the Land Act; that suggestion was made to you, was it not?—I do not remember the suggestion.

2496. Let me refer you to the Question 1394 (Mr. *Sexton*): "But as against the suggestion made that the cases struck out or withdrawn are cases in which agreements have been come to out of court, it is equally open to suggest, or to believe, that they may not have been heard because, first, of a threat of eviction for arrears; secondly, the fear of an appeal; thirdly, the threat to take away something, such as the right of turbary, and so forth?" Now have you any ground for supposing that, either as regards arrears or by the taking of leases, tenancies have been broken and that the Act has been defeated?—I was not, in the answer to the question, speaking of the breaking of tenancies. I referred there to reasons which prevented tenants coming into court at certain times; those tenants who might otherwise come into court to get rents fixed did not come into court for these reasons. Of course a threat of eviction would not break the tenancy, but that referred to a reason why the tenants would not come in.

2497. And speaking generally the taking of a lease is a more valuable consideration, is it not, than the fixing of a present tenancy?—I do not know that.

2498. It may be the fixing of a fair rent for a longer period than 15 years?—I do not know that in Ireland that would be considered a very great advantage now.

2499. Just on that question of arrears, as it has been touched, have you found, as a rule, that arrears have been a difficulty to tenants in entering the Land Court, or does not that come before you?—Yes.

2500. Of course, the action of the Arrears Act of 1882 has practically cleared off a great many of those cases, has it not?—I am afraid a great many arrears have arisen since that Act.

2501. As

Colonel *Waring.*

2501. As a matter of fact, have not every one of the men whose arrears were cleared off in 1882 re-incurred arrears?—A great number of them.

Mr. *Brodrick.*

2502. You gave us some evidence as regards the circumstances under which you fix a fair rent. Can you give us any more definite information as to the basis on which you fix a fair rent? Have you any fixed scale which you apply to the rent-producing qualities of the farm?—Like a scale of prices?

2503. I understood you to say that a scale of prices would be regarded—— ?—As useless or impossible.

2504. Of comparatively little value to you?—Yes.

2505. Then you do not go at all on a scale of prices?—No; as I say we find it absolutely necessary to deal with cases on the general experience and acquaintance of the lay Commissioners with the effects of the existing prices and the past prices. A scale, according to my experience, would be really most fallacious, as in endeavouring to follow a scale you really would have to leave out of consideration a number of circumstances that would so affect it as to make it of very little use, or should make it of very little use.

2506. Do you take the scale of prices as one of the incidents of your instructions in fixing a fair rent?—No, we do not.

2507. I mean supposing there was a great fall in prices next year, and you were fixing a fair rent, would you fix that fair rent on the land without regard to the fall of prices?—No; we should consider it, of course, in the way an experienced agriculturist or farmer would himself consider it, if he were taking the farm for his own occupation or use. He considers naturally what the course of prices has been and is; he considers the fall which you referred to, which has taken place in that particular year; and tries to estimate how far that fall is likely to be a permanent one, and how far it will affect the rent-producing capacity of the land; and estimating it in that way, of course we take into account the flow of prices.

2508. But to secure uniformity of decisions you are not in favour of any instructions beyond these general bases on which you go being laid down for the guidance of the Sub-Commission?—I think not; I think the example we have had of the scale of prices laid down in the various Valuation Acts shows conclusively the utter futility of adopting a scale of prices.

2509. Of course there are other instructions which may be laid down, and were laid down by Sir Richard Griffith in his valuation; you would not follow that for uniformity?—I think it is quite possible that certain principles might be laid down by the Chief Commission, we will suppose, or by the Court of Appeal, as to the principle on which we should proceed to deal with our valuations; but I think that any definite schedule of instructions such as that prepared by Sir Richard Griffith in great detail would be largely useless, and, in fact, rather dangerous.

2510. Do you find in practice that your lay Sub-Commissioners, with whom you sit, differ much in

Mr. *Brodrick*—continued.

their valuations?—No; I would say not. Undoubtedly in individual cases they may differ largely, but not at all in any general way.

2511. They differ largely; but is it not the case that you sometimes have a holding examined by one lay Sub-Commissioner only?—Very seldom.

2512. For expedition one takes one holding, and another takes another?—Oh, no; that principle now is never adopted.

2513. Then in every case in your Sub-Commission two lay Commissioners go over the holding?—Quite so, unless one may be ill, or some exceptional case arises.

2514. Having regard to what you have said as to the necessity of considering what an experienced man would give for the holding himself, do you consider that in refixing rents which have already been fixed under that system (I am speaking now of closing the 15 years' term) it would be necessary to view again all the holdings and go into them exactly in the same way as before?—I think that undoubtedly, in the great majority of cases, it would be necessary.

2515. I was rather coming to this, whether you hold that, taking into consideration the previous inquiry as to the holding, which very often has been twice heard, by yourself and the Court of Appeal, and the fact that all the circumstances, and the situation of the holding, have been fully considered on the last occasion, there is any means, by a scale of prices, or any other means by which justice might be done without the rehearing of the case?—Well, I have considered that question very much for a long time, and really I am unable to think out any scheme that I think would be satisfactory working on prices; in fact, I think, owing to the immense number of circumstances and considerations that we have to deal with in fixing a rent, it would be utterly impossible even to revise a rent without some form of consideration of each particular case, and some form of actual inspection of it; for actual conditions change so much in 15 years, that, although it may have been perfectly fairly considered on the previous occasion, those conditions have now so altered as to require a second examination and consideration.

Mr. *T. W. Russell.*

2516. Will you let me ask you this question: Have you had any cases where rents were fixed under agreements that have not been registered, and have come before you in your Sub-Commission Court?—Oh, yes, very frequently.

2517. What have been the results there? You had, first of all, the fixture by agreement between the parties after the Act of 1881 passed?—Yes.

2518. Then you had a regular hearing of them before a Sub-Commission?—Yes.

2519. What have been the results of those cases?—I can recall several of these cases where the Sub-Commission rents have been entirely on a different basis to the rents fixed by agreement, and where very serious alterations in those rents were made. Of course, the curious part about it is that they varied so much. In some cases we found we had to make very large reductions

Mr. *T. W. Russell*—continued.

on some of the rents fixed by agreement; whereas on others fixed side by side with them we would make a comparatively small reduction, showing that the rents fixed by agreement were fixed without taking into consideration the actual productive power of the respective farms.

Mr. *W. Kenny.*

2520. Could you give us the names of any of those cases?—I could, undoubtedly.

Mr. *Macartney.*

2521. What agreements are these?—Those are agreements made between landlord and tenant in 1882, that were not heard in court, the agreements being made and the forms actually signed by the landlord or agent, and where the landlord's agent omitted to file them in the Land Commission Court, so that the tenant is unable to come in again now.

Mr. *W. Kenny.*

2522. You will give us a list of these—any that you can?—I can state for you some of the estates on which it happened.

Mr. *Brodrick.*

2523. In fixing a fair rent, how do you deal with a question where a tenancy outside Ulster—not under the Ulster custom—has recently been sold for a large sum?—Sold by one tenant to another you mean?

2524. By one tenant to another. Do you take that into account in fixing the rent?—Of course, what we do now is this: We regard the fact that the tenant has got the right of occupancy in his holding; he has got, in fact, a tenant right established for him by the Act of 1881. That tenant right includes the right of sale and the right of fixing the rent. The tenant may sell his holding to another tenant, carrying with it that right to come into court and get a rent fixed; consequently we hold that in such a case the mere payment of a large sum for the tenant right in a holding in no way debars a tenant from having a rent fixed.

2525. Do you mean to say by that, supposing a man has improvements to sell, you would consider those? Do you mean to go so far as this, and say that where a man proves no improvements, and has not himself bought the holding, you would consider it fair to reduce the rent, even although he had given a very large sum to the previous tenant of the occupancy?—We think that even though he may have given that sum for the occupancy, that sum is given by the purchaser for the right to come in and get a fair rent fixed.

2526. That is to say that, where no valuable consideration is sold, but merely the right of occupancy, the right to come before you and get a fair rent fixed, large sums are given?—The right to get the rent fixed is looked upon as one of the incidents attaching to the holding, and as a valuable adjunct to the holding, consequently a man will pay a good sum for the right to a holding which has got that privilege. If it were held to be excluded from the Act, the probabilities are that that sum would not be paid.

Mr. *Brodrick*—continued.

2527. Have you had much experience of free sale outside Ulster?—Not much, mainly in Ulster.

2528. Have you ever been asked to fix that valuable tenant right outside Ulster?—Yes.

2529. You have been asked to fix it by the landlord?—Yes.

2530. Now what process do you adopt in that case? Do you consider simply the improvement for the sum given, or what principle do you adopt?—That is also, of course, a very important element; but we consider it in the same way as we consider what would be a fair rent. We consider what would be a fair price to give for the holding, having regard to all the circumstances of the case, and the various rights and obligations that attach to the holding.

2531. Take a case like this; you find a man's rent 50*l.*; he comes to you for a fair rent, and you fix it at 40*l.*, on consideration of all the circumstances; then the landlord says to you, "Will you now fix the value of that tenant right?" The tenant proves no improvements; he does not prove that he gave anything for the land; what sum are you going to fix upon that?—I could not say what sum, of course that depends upon the evidence—the evidence that the landlord gives me and the evidence that the tenant gives me.

2532. But you would fix a sum, you would say that he has the right of having either his rent reduced by you, or that he has put himself into a position of selling at a certain sum of money?—We would fix a price; whether large or small, we would fix a price. The very fact that he has got the right of occupancy, which has been existing so many years, with a right to sell that privilege of occupancy, and that tenancy, at a fair rent, undoubtedly has a value attached to it.

2533. Then you would say that the effect of the Land Act was to lay upon you the necessity of giving a man a sum of money as value for his holding, even if he has expended nothing upon it, or can prove nothing in expenditure or improvements?—Yes, even that happened before the free sale clauses of the Act of 1881 were ever introduced. I have known, in my own experience, before the Act of 1881, cases where sums were given for the right of occupancy of a holding, although that right was one of very small value; still I have known a price given merely for the right of occupancy; of course that has been increased in value since the Act of 1881.

2534. Therefore, to put it into figures, you would consider it fair to say: "I have reduced this rent by 10*l.*, because that is what a competent man would give as rent, but I hand over, from what is given to the landlord, to the tenant, as a capital sum, a sum of money in consideration of the fact that he has got that lower rent?—He is entitled to sell that right which the law gives him.

2535. You are aware, are you not, that in some cases, even in the south, tenants have got 15 or 20 years' purchase for their holdings, without proving improvements?—I am quite sure of it.

2536. As

Mr. *Brodrick*—continued.

2536. As soon as a fair rent has been fixed?—I am quite sure of it.

2537. With regard to the question of ejectment on title, the case of the Marquis of Downshire you brought forward to-day; you quoted that case, did you not, as an instance where a fair rent was not a bar to a decree in ejectment?—I set forth here this morning the dates and facts at considerable length, and then I said that notwithstanding our fair rent, a decree in ejectment, followed by the taking of possession, resulted.

2538. Do you regard it as a strong case?—No, I do not know that it is a particularly strong case. All I know is that in that case the thing happened.

2539. Was it not clearly shown before the court that the land was taken as accommodation land?—It was shown that it was taken as a town park, but, of course, we must remember that a town park is a statutory creation, and that unless it comes within the statutory attributes in law, it is not a town park. You may call it a town park; you may sign an agreement to call it a town park; but in law it is not one unless it possesses the necessary statutory requisites. It did not possess those requisites, and I held that it was not a town park.

2540. As a matter of fact, did not the landlord in that case, as you told us this morning, take immediate steps to prove its being a town park, and also serve an ejectment as soon as ever he heard that the tenant had served the originating notice?—Yes; the day after he got the originating notice, as I understand, he served a notice to quit.

2541. Would it not be possible to put that case in this way, that it was a hardship upon the landlord, after having obtained a decree in ejectment by a county court judge, that you should have had, pending appeal, I think, to fix a fair rent?—Of course, I was proceeding under the 13th section of the Act of 1881, which laid that obligation upon me.

2542. I am not questioning your procedure; I have no doubt you did all that was right; but you were asked this question last time: Assuming that the landlord took advantage, after the fair rent had been fixed, to eject the tenant by getting a decree in ejectment, is not this rather the reverse side of that, that the fair rent was fixed after the decree in ejectment had been obtained?—Yes; the tenant served his notice; then the decree is given, I think, before the hearing of the fair rent notice; undoubtedly the landlord would consider it a hardship to be debarred from exercising his rights under the ordinary law.

2543. There was this additional fact in that case, was there not, that the land to which it was subject was subsequently ruled to be a town park?—It was never "ruled." Under a decision of this year Dundrum is held to be a town.

2544. That would be a weak case, I suggest to you, upon which to base the idea that the fair rent was not a protection to the holding on which it had been fixed?—I would hardly put it in that way. At the time it was decided it would not

Mr. *Brodrick*—continued.

be a weak case; it would be now, having regard to the later decisions.

2545. I do not understand you to question the correctness of the procedure by which, if a Commission fix a rent *ultra vires* for some reason or another, that can be questioned in a court of appeal or a higher court?—Certainly not.

2546. It would be an exaggeration, would it not, to say that the notion of protection afforded by the Land Act, is, more or less, a popular delusion?—That, of course, is pushing it to very great lengths. All I meant to say was that it is quite open in any individual case to try the question whether our order was not *ultra vires*.

2547. There is no question, is there, that the 300,000 tenants, with regard to whose holdings fair rents have been fixed, are in jeopardy of having decrees in ejectment made against them?—Probably if the landlord wishes to run the risk of costs, he can try the case, which I think is not likely.

Colonel *Waring*.

2548. There is one of your questions here the answer to which seems to be slightly misleading. The tithe rent charge you say is a tithe charge on the tenant. In what case does the tenant pay the tithe rent charge?—There are cases where the tenant has to pay the tithe rent charge, that is, cases where his tenure is such as to impose upon him the obligation.

2549. Under the old laws, do you mean?—Yes, if he holds on a certain tenure under the Act of 1836 or 1837, or whatever the date of the Tithe Rent Charge Act is, the obligation is upon him of paying the tithe.

2550. What tenure is that which would come under your supervision?—All tenures come under our supervision now practically.

2551. I should think there is no case excepting the case of a very long lease in which that could be?—There are leases for lives of a certain character in which the tenant is looked upon as in the position of an owner in fee.

2552. Now the case of turbary; you say that the turbary was detached from the holding by the landlord in many cases?—Yes.

2553. Is it not a fact that, where the turbary is not situated on the holding, it is necessary for the landlord to take it into his own hands, in order to prevent quarrelling and disputes?—But that often is the case.

2554. Is it not a fact that, on the best managed estates, turbary was always allotted, or generally yearly, or at short periods, to prevent disputes?—As a rule, on large estates there is special provision made by the estate office for annual supervision and division of the turbary.

2555. And, further, in a very large part of Ireland no turbary question arises; is not that so?—Yes; it arises mainly in the midland counties.

2556. Take large districts in the north-east; there is no turbary whatever there, is there?—Very little.

2557. With regard to improvements, the unearned increment, you say that allowance is made of the cost of the work done for the tenant?—Yes.

2558. Have

Colonel *Waring*—continued.

2558. Have you not come across cases where the tenants' improvements were not worth the cost of the work done?—Often.

2559. And in point of fact, where those that were claimed were frequently valueless?—Yes, in this way; very frequently a tenant will prove that he has spent 10*l.* or 15*l.* on reclaiming an acre of land, which acre of land would not be worth 5*l.* now.

2560. The same is true with regard to drains, is it not?—Quite so.

2561. At least, as far as I have inspected drains, I have seen a great many that were not worth the cost of making them. Now you say the remainderman comes in in this case of limited ownership, that he can raise the rent at his pleasure, or evict the tenant and say, the tenants are future tenants and are liable to all incidents of future tenancies. Is not one of the incidents of that tenancy that if the landlord raises the rent the tenant can go into court?—No, if he raises the rent, that rise of rent creates a statutory term.

2562. By the raised rent?—Yes, quite so.

2563. By the raised rent?—By the raised rent.

2564. I do not think that will hold?—Look at the 4th section of the Act of 1881.

2565. That is a bit of information which the landlords have not yet put; I am quite satisfied with your answer. As a matter of fact, do not the conditions of a future tenancy entirely prevent rent raising by eviction?—I see nothing to prevent a notice to quit being served on a future tenant followed by an ejectment.

2566. Would not the landlord be liable to pay full compensation under the Act of 1870?—Of course, he is in the same position as if the Act of 1881 had not been passed.

2567. You say the exclusion of the purchaser of a present tenancy would operate for the breach of a statutory condition, such as non-payment of rent, which is probably the only case in which it would be done. You say that the tenant cannot apply to have a fair rent fixed afterwards?—Yes.

2568. Cannot the purchaser redeem in the tenant's name, or cannot the tenant himself redeem and then sell? It is only a matter of procedure surely to protect himself?—If he redeems and reinstates his old tenancy, the matter is different; but there are cases where there has actually been put into operation that last clause of the 20th section of the Act of 1881 which provides that whenever a present tenancy is sold in consequence of a breach of a statutory condition or "in the case of a tenancy not subject to statutory conditions" in consequence "of an act or default on the part of a tenant, after the passing of this Act, which would, in a tenancy subject to such conditions, have constituted a breach thereof, the purchaser or his successors in title in such tenancy shall not at any time thereafter be entitled to apply to the court under this Act to fix a judicial rent for the holding."

2569. What is your general experience with reference to the nature of the tenants' improvements; are they generally made in a workmanlike and substantial manner?—That varies enormously. In some of the Ulster districts, you find them well made in many cases, and very well carried out; in other cases you find, of course, that they are rather scamped; but one cannot make any general statement on the point.

Colonel *Waring*—continued.

2570. Do you generally find that tenants put too low a value on their own improvements?—Oh, no; but, of course, we do not take their view of the value of their improvements.

2571. Now, with regard to proof of the improvements on the part of the landlord: Is it not a fact that books are kept only on the very large estates?—Yes, I would say that is so.

2572. In fact, previous to these Acts, there was no inducement to a landlord to keep books of account?—On the large estates they have kept them in my experience for a very long period back.

2573. But in many cases have you not found that the books only proved the general expenditure on the estate, not on the individual holding?—On the big estates it is not so, they deal with each individual holding.

2574. There are a very large number of holdings which you say have had no rents fixed upon them. Is it not the fact that many of those are in that condition because the tenants think they are not likely to get their rents reduced if they go into court?—Yes.

2575. Mr. Sexton put the question to you: "I take it that the Acts were passed in order to prevent the imposition of excessive rents where the tenant had to live by his industry upon the holding?" Have you not, on frequent occasions, had come under your notice cases where the tenant did not live by industry on his holding, and did not even profess to do so, in which he claimed a reduction?—Yes.

2576. There is a question of costs here which seems to me to be rather misleading. It was suggested that it was hard upon the tenant to have to pay his own costs in case his rent was reduced. Where the tenant goes into court to get a fair rent fixed, and there is a reduction made, each party bears his own costs; that is the general rule, is it not?—Yes.

2577. As a matter of fact, that may arise from this fact, that the landlord may be aware that the rent should be reduced, and that it is only a question of amount?—Yes.

2578. Therefore, under those circumstances it cannot be very unfair that each party should bear his own costs, can it?—No, certainly not.

2579. I think you did answer the question whether it would be necessary to leave a balance on which a person could live. I think you said there were cases in which they would not do so at all, because the farm would not support a person, no matter what rent was fixed on it?—Quite so.

Mr. *W. Kenny.*

2580. Can you say what is the proportion, as a general rule, that the rent bears to the produce produced by the farm in the course of a year: would you say a fifth or an eighth?—The general rule is this: If you ask that question of valuers giving evidence in Ireland, you find that they go on the principle of allowing a third. In England, if you read agricultural works on the subject, one-fifth seems to be the rule.

Colonel *Waring.*

2581. Do you mean to say they allow a third in Ireland?—That is the general rule, if you ask valuers that question in court.

2582. In considering the value of a holding, do you give credit to the landlord for the advanced value by the making of railways or public roads?—Yes.

2583. Do you give that to the landlord or to the tenant?—To the landlord. It increases the value of the holding.

2584. On the question of the deterioration of the soil, do not you find in some cases that the soil is deteriorated under the treatment it has received?—Yes.

2585. How do you balance that; how do you come to a conclusion in that case?—We try there to estimate fairly what the soil should be worth if properly treated.

2586. By what process did you arrive at the original staple of the soil which had been so deteriorated?—In some cases we get actual evidence which will enable us to judge; in other cases, the lay Commissioners, who are themselves men of very considerable experience, can form a very good opinion.

2587. Then that involves the further question as to reclamation; what condition do you assume the land to have been in before it was reclaimed, and at what period?—That also is largely a matter of evidence, and evidence tested by the examination of the lay Commissioners, who can, as a rule, make a very good estimate.

Mr. *Macartney.*

2588. I just want to ask you a question or two about the case of Quinn *v.* Downshire—the County Down case; I am not quite sure whether I caught you quite right, but I think you stated that Quinn was the present tenant?—I stated that there was a present tenancy of the holding in 1881.

2589. Was that a present tenancy enjoyed by Quinn or his predecessor?—By a man named Savage, his predecessor.

2590. But it had not come before the court; it had not been so determined by the Land Court, had it?—No.

2591. Then how do you know it was a present tenancy. I only want to know the ground upon which you said Quinn's predecessor enjoyed a present tenancy under the Act?—It was proved there was a tenancy subsisting on the 21st August 1881.

2592. That would not make it a present tenancy under the Land Act, would it?—Yes.

2593. Surely not; it may be a tenancy that was not a present tenancy under the Land Act. The mere fact that the man was a tenant of certain premises would not make him a present tenant of an agricultural holding under the Land Act?—I did not say of an agricultural holding under the Land Act.

2594. You said a present tenant?—Yes, a present tenant.

2595. But surely a tenant of other than an agricultural holding is not a present tenant within the meaning of the Land Act?—He would be a present tenant, but he is excluded if he is a non-agricultural tenant; it is merely a tenancy existing at the date of the passing of the Land Act.

Mr. *Macartney*—continued.

2596. Of any holding?—Of any holding.

2597. Quite so; I understand what you mean. Do you know how Quinn acquired this tenancy?—He purchased it.

2598. What was the tenancy; what did it consist of?—A few acres.

2599. As a matter of fact, it was a public-house and an acre of land, was it not?—There was no public-house on it.

2600. Are you sure?—As far as I remember.

2601. Are you perfectly certain. If you are not perfectly certain I do not want to ask you about it?—I have the file here. According to the report of the lay Commissioners there were no houses on it.

2602. No houses?—No houses.

2603. What was the average on which he claimed?—I have a map here showing that there was no house upon it. The acreage is 2 acres, 1 rood, and 28 perches.

2604. The form of the agreement does not appear there, does it?—No it does not.

2605. Can you say whether or not it was the common form of agreement on the Downshire estate for all holders of town parks?—Yes, I would say so.

2606. Therefore, would not the presumption be that this land was probably attached to a house in the town and had been held in connection with it?—That may have been so.

2607. It did not transpire before you in evidence that he had purchased a public-house from the man he succeeded?—I have had two or three cases of the same man, in one of which he had purchased a public-house, but not in this case.

2608. It was not in this case?—No.

2609. Another case altogether?—Yes, at different times.

Mr. *W. Kenny.*

2610. How is he described on the originating notice; is it "Farmer" or "Publican"?—He is merely described as "Henry Quinn, Dundrum." There is no other description. You will see it on the map.

Mr. *Macartney.*

2611. If you had two or three cases, it may be possibly another case and not the one I am dealing with?—I think I dismissed the case of the public-house as a non-agricultural holding.

2612. Just one question on this tithe rent charge: I understand from the answers you gave to Colonel Waring, that the only case in which a tenant would pay the tithe rent charge, would be the case in which his tenure was equivalent to that of the owner in fee?—The first estate of inheritance would be held to be liable to pay the tithe rent charge.

2613. Roughly speaking it would be equivalent to that?—It would be a large tenure, much bigger than that of an ordinary leaseholder.

2614. In fact it would not apply to 99 cases out of 100 that come before you?—It would apply to very few cases.

Friday, 25th May 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HON. JOHN MORLEY, IN THE CHAIR.

Mr. WILLIAM F. BAILEY, again called in; and Examined.

Mr. *T. W. Russell.*

2615. WHEN you were here on Tuesday last you referred to the case of M'Cann *v.* The Marquis of Downshire, and, in answer to Question 2238, you say this: "I see in Mr. Justice Bewley's Judgment in that case, he says,—'It would be a mistake to suppose that a large number of houses must exist to create a demand for accommodation lands.'" Will you go a little further on with that quotation please?—He says: "Four houses at a cross road, including a public-house, a blacksmith's forge, a national school, would create a demand; but it could not be held that accordingly the holdings would be town parks. But on the evidence here, the Court should hold that there was such a demand at Dundrum as that it must be deemed a town for the purposes of the Act."

Mr. *W. Kenny.*

2616. Does not Mr. Justice Bewley say a little further back: "The decision established" (that is referring to Archer *v.* Caledon) "that not only must a demand for accommodation land exist, but the assemblage of houses must be something reasonably answering the description of a town, and that a mere hamlet or collection of houses was not to be treated as a town for the purposes of the Land Acts"?—Yes.

2617. Was not that the question asked you when you said that Mr. Justice Bewley did not hold it to be a town?—I only glanced at the Judgment when you asked me the question upon the point.

Mr. *Macartney.*

2618. You have been asked some questions about the total number of holdings, those upon which fair rents have been fixed, and those which are still outside the operation of the Act, and I think some of the figures given are rather loose. You know Dr Grimshaw by repute, do you not?—Oh, well.

2619. He is the Registrar General for Ireland. You are aware that he was called as a witness before the Cowper Commission, are you not?—Yes.

Mr. *Macartney*—continued.

2620. And that he there stated the number of agricultural holdings in Ireland. He gave these figures at that time, 499, 109, and since that date the number of agricultural holdings has diminished, has it not?—So I would say.

2621. In fact there has been a steady decrease in the total number of agricultural holdings in Ireland since 1861. The figures are these: in 1861, 608,564; in 1871, 592,590; in 1881, 499,109; and since 1881 the number of agricultural holdings in Ireland has still further decreased to (in 1891) 486,865?—I take the figures from you.

Mr. *T. W. Russell.*

2622. Mr. Bailey, you do not mean to assent to the suggestion that there was a decrease of a hundred thousand holdings in 10 years?—I can of course only accept the figures Mr. Macartney is reading now; I take it he is reading from Dr. Grimshaw.

Chairman.

2623. Let me ask you once for all. Can you prove anything in respect of these figures which Mr. Macartney wishes to question you about?—No, certainly not.

Mr. *Macartney.*

2624. Then I may take it that so far as your answers go, on the questions that have been based upon any figures, your answers are not based upon any knowledge whatever, good, bad or indifferent, as to the number of holdings?—The figures that I stated with reference to the actual number of holdings, on which rents were fixed, were taken from the figures before me of the Land Commission Report; but the figures of the holdings which were not within the cognisance of the Land Commission Report I accepted on the authority of the questioner.

2625. But

Chairman.

2625. But you have no competent knowledge of your own about them?—I have no knowledge of my own.

2626. But any statement of yours as to the number of holdings left unaffected by the Land Acts, is a statement you do not make on your own authority?—I have no knowledge of such cases.

Mr. *Macartney.*

2627. Then the answers given by you to questions which purport to state the number of holdings in relation to the area that have and have not come under the operation of the Act are, equally, answers given without any knowledge whatever. You have accepted the figures without any knowledge as to whether they were right or wrong. Questions have been put to you as to whether a certain number of holdings that are less than a certain acreage have been excluded from the Act by certain decisions or certain sections of the Act. Then I put it to you that your answer, in which you apparently accepted certain figures as correct, so far as you know, may be correct or it may not be correct; it is not based on any knowledge whatever?—That may be so; but I am not aware of any answer of mine of that kind.

2628. I will put to you Question 2292, put to you by Mr. Russell, I do not mean to say you are responsible for it at all; you were asked by Mr. Russell the following question, "There is another point in that if you will allow me. I think there are at least 50,000 of the Irish tenancies, that are reported as tenancies, that are mere gardens, half-acre gardens, and that would not come under that Act at all." Then you say, "Yes, a very large number of those half million holdings are composed of holdings under one acre, and would probably be excluded from the Act on a variety of grounds of exclusion"?—The meaning of my answer there is, assuming the number of 50,000 is correct, I am aware that there are a large number of holdings of that class that are excluded on various grounds.

2629. But you have no knowledge as to the 50,000?—As to the actual 50,000; I accepted Mr. Russell's number.

2630. Now with regard to your answer to Question 795 (this is on the question of lease), as a matter of fact in all cases where the leaseholders have come into Court to fix a fair rent, the rents reserved in the old leases have always been reduced, have they not?—As a general rule.

2631. There may be an odd exception, but as a general rule they have been reduced?—As a general rule, yes.

2632. From Table 8 of the Land Commission Report of last year it appears that the average reduction on those cases coming into Court up to the 31st March 1893 is 24·8?—In the report for the present year, down to the 31st March 1894, the percentage given is 24·7.

2633. That report is only just out, and the reduction of other fair rents fixed between 1881 and 1893 was 21·2, I think, from Table 4 of last year's report; perhaps you will give what it is this year if you have got it there?—It is 21·2 for this year up to March 1894.

Mr. *Macartney*—continued.

2634. Precisely the same as last year; you mentioned a case of Dyas *v.* Scott, a Meath case?—Yes.

2635. Do you take that as a typical case?—Well, that is a typical case of that class of holding.

2636. In this case did the tenant reside on the farm?—I do not think so. The house on the holding was valued at 4*l.* 10*s.*, but I have not the evidence before me, I have merely the file.

2637. I think it was a Mr. Jacob Dyas who was the tenant?—Well, Mr. Richard Seymour Dyas.

2638. In the lease, Richard Holme Dyas?—The lease was made to Jacob Dyas.

2639. Would you say that Mr. Dyas was a man who made his living by farming in this case?—Well, I really do not remember what Mr. Dyas' business was. I think he lived at Kingstown.

2640. Was there a residence on this farm?—In the Government valuation I see that there was a house valued at 4*l.* 10*s.* a year.

2641. Do you think that when the lease was made, the tenant who accepted it was not in a position to form a fair judgment as to whether the terms of the lease were fair or not?—Of course he is supposed to know his own business. I am merely stating what the law is.

2642. Taking this case as a typical case (you took it yourself as a typical case), do you take it that the tenant in this case was not a man who was very well able, probably, to defend his own interest?—He was a man of some position.

2643. And do you think that under the terms of that lease, the lease was not adequate compensation for the improvements he had made?—That really is a question that I can hardly answer. The question of compensation under the lease is one that I really at the present time would have no means of judging of. The lease was made 15 years ago.

2644. Do you think that there are any classes of improvements that cannot be compensated for by enjoyment under a lease?—I would not say that. It would undoubtedly be possible to compensate for improvements, having regard to the nature of the lease, and the rent and the consideration that was given for the making of the improvements. I could not state any general rule.

2645. You have given a list showing at least you assented to Mr. Sexton's Question 1381, that there are some 47 restrictions and exclusions from the Act. In your opinion, are all the cases that come under the heading of "restrictions" equally material? Do they affect an equal body of agricultural occupiers now?—Certainly not.

2646. I suppose, in some cases, the restrictions are confined to almost single instances, or perhaps you would hardly say they would be one per cent.?—In my experience some of those numerous restrictions have come before me very rarely; others very frequently.

2647. I want to draw your attention to your answers given to the Questions 1382 and 1383. You see 1382?—Yes.

Mr. *Macartney*—continued.

2648. Mr. Sexton put the question to you: "So that upon the comparatively simple provisions of the statute of 1881, with respect to fair rent, you have had super-imposed, chiefly by judical decisions, a mass of exclusions and restrictions, amounting, on the whole, to 47 classes of restrictions." You answered: "Yes; a large number of those, of course, are specific; they are specifically stated in the Acts, or by inference deduced from the Acts." Do you wish to modify that answer?—I have stated there, that a large number of those are specifically stated in the Acts, and I will adhere to that.

2649. Will you look at the terms of the question. Do you adhere to that answer, or do you wish the Committee to understand from your answer that it is your opinion that by judicial decisions, a great number of restrictions and exclusions have been "super-imposed" upon the Act. Is that what you wish to convey to the Committee?—I would not put it in that way, I state myself, that in the Act, or by inference from the clauses in the Act, the majority of those exclusions and restrictions come. Some of them undoubtedly are not stated in the Act, but are deduced, by judicial decision, from sections of the Act.

Chairman.

2650. Not "super-imposed upon," but extracted from?—Extracted from.

Mr. *Macartney.*

2651. In the ordinary way in which you would extract consequences from any Act of Parliament that came under the supervision of any judges?—Quite so.

2652. Quite in the ordinary way?—Quite so.

2653. There is nothing exceptional, I understand?—Certainly not.

2654. You do not wish to state to the Committee that the Court of Appeal, in Ireland, has taken any exceptional course with regard to that?—Certainly not. I did not intend to criticise the Court of Appeal in any way.

2655. I only want to make it quite clear, because the terms of the question are rather large, and your answer seemed to me to be rather large. Then will you come to Question 1383, the next question, where you were asked by Mr. Sexton: "But is it not possible that the restrictions as to fair rents upon the face of the Acts have been greatly enlarged, and that, in some cases, what would appear to the ordinary mind at any rate, to be new sub-heads of restriction, have been devised by the judicial interpretations?" "Yes, I think it undoubtedly has been so" (you answer), "that is to say, several restrictions that were not referred to at all in the Acts, such as those dealing with tenancies created by tenants for life; of course, those have been brought in altogether by judicial interpretation"?—Yes.

2656. Do you wish to modify that answer; having regard to the terms of the question, I mean?—I prefer, of course, to adhere to my own answer. I gave a specific case, which I think is a correct one.

Chairman.

2657. As I understand, you do not wish to modify your answer, either to 1382 or 1383, do you?—No; I think my answers are quite correct; but Mr. Macartney says, do I adopt the entire question?

2658. The main point is this: Do you adhere to your answer?—I do.

Mr. *Macartney.*

2559. I understood just now you did not?—But I do.

Chairman.

2660. You do not wish to alter your answer, do you, in any way?—No; I adhere to the answer.

2661. You now say you do not desire to qualify any of those answers?—Quite so.

Mr. *Macartney.*

2662. I want, then, to go on to Question 1739. You were asked in Question 1739, by Mr. Healy, this: He says, "May I ask you this question: Is not the view which prevails amongst laymen, that a fair rent order is impregnable, simply a popular delusion?" You said, "Oh, yes, undoubtedly." I wish to know whether you desire to make any observations upon that answer?—My answer to that, so far as I am responsible for the answer itself, I do not wish to alter in any way. I have given two cases, where a fair rent order is not impregnable.

2663. Do you mean to suggest to the Committee that those two cases, in your opinion, are a sufficient foundation for the idea "that a fair rent order is impregnable" is "a popular delusion" as a protection to the tenant. Is the notion of the protection afforded by the Land Acts more or less "a popular delusion," or is it not, in your opinion?—In my opinion the protection of the Land Acts is a real protection; but, as I qualified it on the last day, the notion that a fair rent order is impregnable, is, I say, a delusion.

2664. If the fair rent order is made without jurisdiction of course it will not stand?—Quite so.

2665. Now will you refer, on the question of limited owners, to Answer 2279; in answer to Mr. Russell with regard to the question of tenancies created by life owners, you said you thought that in cases of estates that had been for a long time in settlement, undoubtedly there would be a large number of cases in which this point could be raised; is that answer based upon any actual knowledge that you have from your experience as a legal Commissioner?—Yes; in my experience I have known of cases where the estates were in settlement for a series of years, and during the course of the various occupations by the limited owners changes did take place in tenancies that made them into new tenancies.

2666. Now does that experience justify you in framing your answer in those words, "a large number of cases"?—I think so.

2667. You cannot give any percentage as you have told us?—No.

2668. And those cases only came before you every now and then?—Yes.

2669. Now

Mr. *Macartney*—continued.

2669. Now I want to ask you a question as to cases where administration is not taken out, Question 972; have you many of these cases coming before you?—Yes, a very great number.

2670. Do you find that administration is not taken out from ignorance on the part of the tenants, or from a desire not to pay the necessary fees?—As a rule the small tenants never think it necessary to take out administration. One dies; he is succeeded by his son; the son does not think it necessary to take any legal steps; the landlord accepts rent, and the thing goes on.

Mr. *Sexton.*

2671. Does he pay duty?—No.

Mr. *Macartney.*

2672. What do you think is the deterrent cause operating in the mind of the tenant; have you any knowledge of this question or not?—It is not considered necessary. The tenant does not think it necessary until the actual occasion arises. It is for the first time then brought to his attention that in order to complete his title to the tenancy something must be done.

2673. Do you mean to suggest to the Committee that the tenant does not know that he cannot complete his title to the tenancy until he comes into your Court?—In a very large number of cases that is so.

2674. In a very large number of cases?—Yes.

2675. That he does not know that he has no title when he gets his receipt from the landlord. How are these receipts generally made out according to your experience?—Nearly invariably to the "representatives of so and so, deceased."

2676. Do not you think that when the tenant, having paid the rent himself, gets the receipt made out to "the representatives," he knows that he has not got a legal title?—I have known those receipts given 30 years.

2677. Quite so. Do you mean to suggest that the tenants do not know themselves why it has been given in that form?—I have often asked that question, and they have invariably stated that as long as they got the receipt, they never concerned themselves as to its form.

2678. Do you mean to say that they do not know why?—I could not say that.

2679. Do you accept the figures given there by Mr. Healy in Question 972; they seem to be rather large. He talks of "thousands of tenants excluded" on this point?—I could not give any figures.

2680. You only mean to say a large number?—Yes.

2681. On the question of turbary, have you come across any cases where, when the turbary was within the ambit of the farm, the landlord had segregated it from the holding when the case came before you, or had attempted to do so?—Yes; I have known some few cases where it was attempted.

2682. When it was actually within the ambit of the farm?—When it was actually within the ambit of the farm.

2683. Of course the landlord was then unsuccessful, I presume, naturally?—Yes; quite so.

Mr. *Macartney*—continued.

2684. I suppose the only case in which the landlord would be able to segregate the turbary successfully, would be where the turbary itself was detached from the farm; I mean to say detached from the main body of the holding?—Yes.

2685. And from the estate itself?—As a rule the holdings on those estates run along the bog, and each tenancy has got a portion of the neighbouring bog attached thereto.

2686. Now on the question of town parks, is it your opinion that any *bonâ fide* farmer, I mean to say a man who makes his living by farming, has been excluded from the operation of the Act owing to the exclusions and the restrictions upon the Acts with regard to town parks?—With respect to those town parks, as a rule occupiers in the small towns carry on a double business, they are partly shopkeepers, partly farmers, and in the case of those persons some of them are undoubtedly excluded under the town park sections.

2687. I am putting the case of a man who makes his living entirely by farming?—I had two cases, I think, near the town of Charlemont, where evidence was given that the occupiers of those holdings lived in the town, but they had no other business than the business of working those town parks.

2688. And they made their living by it?—And they made their living by it; these cases do not occur often.

2689. Except those two cases you have not had many?—Those are examples; but that is not often the case.

2690. Taking your experience with regard to this question, the larger proportion of town park holders are either people who are entirely shopkeepers, or have added to their shop-keeping the attraction of farming; they do not support themselves from it?—As a rule they carry on both occupations.

2691. Now I want to ask you a question or two with regard to the percentage which you allow for tenants' improvements. I cannot find the exact question at the moment, but I think I can put it to you correctly. Mr. Sexton put to you a case where the improvement in the letting value of the land had been from 10*s.* to 15*s.* an acre, and where the total improvements on the farm had been of the total value of 10*l.* a year, and, of that, I understood your view was that the tenants got 3*l.*, being 3 per cent. upon the capital that he expended in the improvement, and that the 7*l.* out of the 10*l.* went to the landlord?—I do not remember those figures.

2692. I have found the question now; it is on the 4th May, Questions 1199 and 1200, it is an interpolated question of Mr. Sexton's; he puts to you this question: "But if the tenant expends the same sum of 100*l.*, no matter how much that expenditure has increased the letting value of the farm (suppose to the extent of 10*l.* a year) you will give him a percentage, say, of 3 per cent. upon his 10*l.*, leaving the other 7*l.* due to his expenditure to become the property of the landlord?—Yes.

2693. Now I want to ask you at what actual period this division takes place. I will put to you this

Mr. *Macartney*—continued.

his case: A tenant holds 10 acres at a rent of 15*l.* (30*s.* an acre), he claims and proves improvements to the extent of 100*l.* increasing that letting value by 10*s.* an acre; that is, 10*l.* a year, I am putting as simple a case as possible. The lay Commissioners go on the farm and they estimate the fair rent at 10*l.*; at what period do they make this division. What period will they give him. How do they deal with his twenty shillings. I want to know when they bring this proposition of yours into operation?—They have evidence that a certain amount has been spent in improving the holding, we will suppose a hundred pounds, and that that has resulted in an increase in the letting value of the holding. They give the tenant a percentage on the hundred pounds that he has spent in making the improvement, and any of the increased letting value over and above that percentage goes to the landlord.

2694. I want to know exactly what their process is. I want to know when they do it, and when they apply it, at what period of their calculations do they apply this. It would make a very material difference in the rent; for instance, in the case I have taken, the tenant claims, and proves, that he had improved the letting value of the land by 10*s.* a year. I want to know at what period do they begin to make this provision; do they first fix the fair rent of 20*s.* and then begin to operate upon the 20*s.* by deducting a percentage upon the capital?—Of course, valuers have got different ways of arriving at the conclusions which I have stated. Some begin by first putting on the land the competition value of each acre; others begin by putting on the land the fair-rent value of each acre.

2695. Now, we will assume they put the fair rent value on, we need not go into the competitive value at present; in this case it is 20*s.*, and they have got to deal with an improved value of 10*s.* an acre. I want to know when they begin to deal with that question. In their minds they say, this land is worth 20*s.* an acre; then they have got to deal with the fact, according to this answer of yours in the case put by Mr. Sexton, that there is the 10*s.* (an annual value of 10*l.*), to be divided between landlord and tenant, and I want to know how they divide that when they begin to take off the 3*l.* and add the 7*l.*?—Of course, in the case where they have valued the holding at 20*s.* as its fair value, they must estimate what is the amount of the interest allowed to the tenant, that is, the 3*s.*

2696. When they take that off, the 20*s.* comes to 17*s.*?—That would come to 17*s.*

2697. Then do they add on the 7*s.* to make that 24*s.*; is that the process?—In that case you must remember that the 20*s.* is a sum which represents the value of the land as it stands, including the result of the improvement.

2698. Quite so?—That is, it would not be worth 20*s.* if the tenant had not expended the hundred pounds in improving it; consequently if they give 20*s.*, the landlord gets the entire value of the improvement, and the tenant would get nothing for his improvement, if they did not then deduct the 3*s.*

2699. They then deduct the 3*s.*; I only wanted to find out what the process was?—Yes.

Mr. *Macartney*—continued.

2700. So that the eventual fair rent, in the case I have put to you, would be 17*s.*, assuming they went on this process?—Yes.

2701. Then you told us on Tuesday last, I think it was, that the portion of rent to the produce of the farm was, in your opinion, as far as you could judge, one-third in amount?—What I said was, that the evidence of valuers, as a rule, apportioned the share as one-third. Of course, I am not a valuer.

2702. No, no, but that does not apply then to the decisions of your Sub-Commission, for instance?—No, we do not proceed on that basis at all.

2703. I only wanted to clear that up, I was not sure about it. On this question of the improvable value, the unearned increment value of the land, I have no doubt there is great difficulty in arriving at it, because you cannot lay down one general principle, I suppose, for all cases?—No.

2704. For instance, I put to you this case: You might have the case of a tenant who farmed 50 acres of land, and spent, we will say, 8*l.* an acre in improving it, and increased the letting value of that farm by 12*s.* an acre?—Quite so.

2705. In that case I want to know would your Sub-Commission give him the whole benefit when it had been done by drainage and manures, and high farming; would he get the whole benefit, or not?—No, he would merely get the benefit of his 8*l.*

2706. He would get merely the benefit of his 8*l.*?—Yes, quite so.

2707. Now, I put to you another case, perfectly distinct from that; the case where a tenant had 50 acres of land, the letting value of which was only worth 15*s.*, owing to the fact that it was liable to flooding; that during his occupation he had erected a bank at a cost of 2*s.* an Irish perch, 50 perches 5*l.*; and that the only cost of maintenance of that bank was a pound, it would add 6*d.* an acre to it?—Yes.

2708. If the effect of putting this bank up and stopping the flood increased the letting value of the farm by 30*s.* an acre; how would you deal with that?—We would merely give him the interest on his expenditure.

2709. You would merely give him the interest on his expenditure?—Quite so.

2710. You only give him 5 per cent. interest?—The percentage must vary according to district.

2711. Would it be as high as 15 per cent. in some cases?—I would not put 15 per cent.

2712. You would not; but the percentage on his outlay varies according to what the Sub-Commission thinks he is entitled to?—According to the character of the work.

2713. Of the holding?—Yes.

2714. I want to ask you a question or two about the labourers' clauses. What are the clauses; will you just refer the Committee to them?—Section 18 of the Act of 1881.

Chairman.

2715. Will you read the clauses relating to labourers in the Act of 1881?—The labourers' clause in the Act of 1881 is the 18th section; that

Chairman—continued.

that is the section giving power to erect cottages for labourers within certain restrictions.

2716. Will you read it?—Any person prohibited under this Act from letting or sub-letting a holding, may, after service of the prescribed notice upon the landlord, with the sanction of the Court, and with power for the Court to prescribe such terms as to rent and otherwise as the Court thinks just, let any portion of land in a situation to be approved by the landlord, or failing such approval, to be determined by the Court, with or without dwelling houses thereon, to or for the use of labourers *bonâ fide* employed and required for the cultivation of the holding, and such letting shall not be deemed to be a sub-letting within the meaning of this Act, or to be a letting prohibited by this Act; and notwithstanding such sub-letting the tenant shall, for the purposes of this Act, be deemed to be still in occupation of the holding. Provided that the land comprised in each letting shall not exceed half an acre in extent, and that where the holding contains not more than twenty-five acres of tillage land the number of such lettings shall not exceed one, and that where the holding contains more than twenty-five acres of tillage land, but not more than fifty acres of such land, the number of such lettings shall not exceed two, and so in proportion to the acreage of tillage land in the holding after fifty acres."

Mr. *Macartney.*

2717. With regard to that, would you look at your answer to Question 1908, where you find this, that if the "tenant lets a piece of his farm for the purpose of a labourer's cottage, and he requires that labourer for his work, he will be excluded from all Land Acts," the answer is: "That is if the letting was made after the passing of the Act of 1887?—Yes.

2718. Is that quite accurate; I mean to say, are you quite certain about that?—Oh, yes, for later on I was asked the very question with regard to that section I have now read, and I stated that if it were made in accordance with the restrictions of that section, it did not come within the general law against sub-letting.

2719. That is to say, that if he gains the consent of the landlord he can sub-let?—Quite so; that is, provided he follows the statutory course.

2720. And even without his consent he can go to the Court?—Of course.

2721. Now, with regard to the following section, section 19 of the Act of 1881; "power of Court on application for the determination of a judicial rent to impose conditions as to labourers' cottages" Have you put this section in force?—Yes, I have done so, but not frequently.

2722. It is a section that has not been worked very largely, is it not?—Yes.

2723. Can you assign any reason for that?—One important reason is, the Labourers Acts that have come largely into operation since that Act of 1881, and which have given another mode of dealing with the question of labourers.

2724. But that would apply only to the south of Ireland, I suppose; that observation of yours would not apply to Ulster?—I never have put that section into operation in Ulster.

Mr. *Macartney*—continued.

2725. Did the section work previously to the Labourers Acts of 1883 and 1885 in the south of Ireland?—I cannot say.

Chairman.

2726. You were not on the Commission then, were you?—No, I was not. The Land Commission can give you a return of the number of cases in which it was done.

Mr. *Macartney.*

2727. Have you any return here?—Yes, I can give you a table up to March 1894, showing, according to provinces and counties, the number of cases in which orders have been made by Sub-commissions respecting labourers' cottages, from the 22nd August 1881 to the 31st March 1894.

2728. Would that be under this Section 19?—That would be under Section 19.

2729. Can you give the total?—The total is 851.

Colonel *Waring.*

2730. Of which there were 481 in Munster, were there not?—Yes.

Mr. *Macartney.*

2731. Now, with regard to Ulster, there this section does not operate?—It does operate.

2732. The Act applies; but, I mean, no material consequences have flowed from it?—There were a good many orders made in Ulster, but apparently in the early years I have not made any of those orders.

2733. Can you give the number there?—The total number in Ulster is 180; the total number in Leinster, 154; the total number in Connaught, 36; and the total number in Munster, 481.

2734. After all, that is not a very large proportion?—No.

Colonel *Waring.*

2735. That is in last year's return, is it not?—Yes.

Mr. *Macartney.*

2736. Can you suggest any reason for it in Ulster?—No, I cannot.

2736*. The Labourers Act does not operate there, except, at least, in one or two unions. It has not operated largely in Cavan; you have been in both, I believe?—One reason may be that in Ulster a number of the farms are small tillage holdings, worked by the farmers themselves, and there is not much need for outside labour.

2737. But still that does not apply to all?—No.

Mr. *Carson.*

2738. You have told us, I think, that on the hearing of a fair rent application, the landlord has the right to have a specified value fixed?—Yes.

2739. Are there many applications of that kind?—Not many, having regard to the number of applications to fix a fair rent.

2740. In proportion?—No, not in proportion.

2741. Have the Land Commission refused over and over again to fix the specified value?—Yes.

2742. Why?—

Mr. *Carson*—continued.

2742. Why?—Mainly on the ground that they get no evidence to enable them to fix the value.

2743. Have you fixed it yourself in any cases?—Oh! I have.

2744. Would you just tell me now; when do you fix it, how do you arrive at the specified value?—We get what evidence we can, first from the landlord who makes the application as to the value of the holding, as to what its value should reasonably be.

2745. Do you mean the market value?—His evidence usually is directed as to what the fair value is, using the word "fair" in the same sense as we use "fair rent," not the competition value, but the fair value, what a reasonable man would be supposed to give for the holding. Having got that evidence, and also the evidence from the tenant (if he offers any), we then inspect the holding, and fix the value largely on the result of that.

2746. Suppose a case where a tenant has made no improvements; that is to say, where no improvements are proved, and you find the rent 30 per cent. too high, would you fix a specified value in that case?—I think we have done so in such cases; I cannot recall any specific instances.

2747. Then as regards any value the tenant would have to pay; the specified value in that case must be derived under the Act of 1881?—Oh, yes; but for the Act of 1881 he practically would not have had a "value."

2748. Could we have a schedule prepared of the reductions made in the rent in cases where the specified value has been fixed?—It would be an immense task.

2749. But surely there must be a record kept of cases in which a specified value is fixed?—We could easily get specimen cases.

2750. Say 20 or 30?—Would you wish those cases to be taken for any specific district, or taken at random?

2751. Generally, at random; then, as I understand, the specified value is not the market value?—No.

2752. And if the tenant has made no improvements, the specified value arises by reason of what is given to the tenant under the Act of 1881?—Yes, the right of occupancy at a fair rent.

2753. Can you give us at all any idea, from your very large experience, as to what the difference between the fair rent and the market rent is; the percentage?—Well, that it would be difficult to do, as we have no means of arriving at the market rent in the cases in which we fix a fair rent.

2754. Then has the fair rent no proportion to the market rent?—I would imagine it had some proportion, if you worked it out, but we never work it out on that basis; we work it on what we think would be the fair sum paid by a reasonable man who was to take that land for his own purposes.

2755. Surely in considering that, a fair man, taking it for his own purposes, would have some regard to the market value?—Undoubtedly; the market value will go up and down in the same way as our fair rent will go up and down, and it will be a certain ratio higher than our fair rent.

Mr. *Carson*—continued.

2756. You told me a moment ago that you do not take the market value into consideration?—We take it in this sense: that the value that is given to us by the witnesses that are examined very frequently is a competition value. Many witnesses give us what the farm would let for, if it were in the hands of the landlord, and he were letting it in the open market. Then they proceed, in many of those cases, to estimate what they think would be the fair rent. That will vary very often, perhaps sometimes 30 per cent. less than the competition rent. It will vary very much. You cannot have any general rule that would govern it.

2757. Not necessarily a general rule, but from your large experience in doing out these sums every day, the difference between competition and market rent, could you give us any idea?—I could to this extent; I would say that the fair rent of a holding, as a rule, would be, roughly, about two thirds of the competition rent.

2758. Two-thirds of the competition rent?—Roughly. In many cases the fair rent would, of course, be less than the two-thirds, but generally speaking I would take it in that way.

2759. And, I suppose, in fixing the free sale value, we may take it that the specified value, in the same way, is about two-thirds of the competition value, or of the market value?—Yes, probably about that.

2760. You have told us a good deal about improvements. Am not I right in saying that every improvement since the Act of 1870 is presumed to have been made by the tenant?—Yes.

2761. And am not I right in saying also, that as regards improvements prior to 1870, although in the certain cases excepted, from the 5th section of the Act of 1870 there is no presumption of law, there are, in many cases, presumptions of fact, in favour of the tenant: for instance, I will give you an illustration: Supposing you found that the tenancy had existed, say for a hundred years (that could be shown by receipts, or by tenants being shown to have been in occupation), and you found a house upon the land, which apparently must have been built, from the character of it, within the last 50 or 60 years, would not you presume that to be the tenant's, and refuse to fix rent upon it?—If it was shown that the house was there before 1850?

2762. No; what I am asking is from the character of the house itself?—Yes; in Wall *v.* Trustees of Foy you will find that principle laid down.

2763. That is what I want to have. So that if by an inspection you can arrive at the consideration that the thing must have been built by the tenant, apart from any evidence, you give it to the tenant?—Yes, that is so.

2764. As regards the interest upon improvements that you give to the tenants, you have already told us that that must vary according to the nature of the different improvements, some are more permanent than others?—Quite so.

2765. You have also, I think, told us that that is all you give the tenant, that is to say, the interest upon those improvements?—That is so.

2766. In the case of the landlord, you do not give him interest upon the money that he has expended

Mr. *Carson*—continued.

expended on improvements specifically, do you?—That depends upon the nature of the improvement.

2767. Take it that the landlord built a house?—There we would give him money interest.

2768. Interest on the house?—Interest on the house.

2769. Why so?—Because in that case we value the holding as it stands. In our valuation of the holding, we never include the buildings; then if we have to give the landlord rent on the house we have to add on, as against that house.

2770. Does not that seem a curious way of proceeding? Would not the proper way in that case be to value the whole, the house and the land, fix the fair rent of the two, then as the house does not belong to the tenant, not to take off anything?—No, that is not the way we ever proceed; we make an acreable valuation.

2771. Might not that be a very fallacious way to give the landlord interest upon the money he expended; for instance, if the landlord expended a hundred pounds upon a house on the premises, it would not at all necessarily follow that the house added 5*l.* a year to the fair rent, it would not necessarily follow, would it?—No. Of course in a case of that kind, we do not actually fix interest on the actual amount the house cost. We have some regard to the character of the holding, and how far the house is suitable to the holding, as an agricultural holding.

2772. I think you stated in one of your answers, that you first allowed him a percentage, and then added on the increased letting value; but you do not do those two operations, do you?—There are two classes of improvements. There are improvements that add to the letting value of the soil, and improvements that do not affect the soil. We deal with those two classes of improvements in entirely different ways. In the case of improvements made by the landlord, that add to the increased letting value of the soil, such as reclamation or drainage, there, of course, we give the landlord his return, by valuing the soil in its good condition.

2773. And in that case the question of percentage does not come in at all?—The question of percentage does not come in at all; but in the case of a house which does not add to the actual value of the soil, there we have to give the landlord his return by an actual addition to the valuation which we put on the land.

2774. That is just where I do not see why that should be done. I put this to you: Do you know whether all Commissions do that?—I can only speak for my own.

2775. Of course you can only speak for your own, and that is very fair; but would not this occur to you, that if you put a fair rent upon a holding, as a holding equipped with buildings, and then if the tenant had done any of those buildings, take off whatever is fair in respect of that; or if the landlord had done them, take nothing off; that would be the fairest way of doing it?—That would be a possible way.

2776. You could do it under the Act?—I see nothing to prevent that being done; but I wish to say that the pink schedule which has to be adopted by all the Commissions, has got a paragraph with respect to buildings under these Acts:—"Buildings, if tenants, state so; if landlords, specify particulars of same; state fair annual value, whether they have been kept in repair, and by whom." So that that clause would require that the annual value of the buildings should be stated in each case.

2777. Expressing my own opinion, I think the clause is wrong?—The Sub-commissioners have to follow it.

2778. Yes, certainly; that may be a very good reason for your following it; but what I want to put is this: there is nothing to prevent you valuing the farm as you find it, buildings and all?—No.

2779. Then if you find the buildings are the landlord's, take off nothing; if you find the buildings are the tenant's, take off whatever is the tenant's fair interest?—That is quite possible. It is altogether a matter of valuation, as to the way in which you go about it.

2780. It has been said in questions put to you, and I think you rather accepted it, during the course of your evidence, that where the tenant makes improvements, after allowing him the percentage, you give to the landlord the rest of the increased value?—Yes.

2781. That is not the increased market value, is it?—Oh, no.

2782. And when you say that you are giving him the increased value, you are really only giving him the increased value, having regard to the difference between the fair value and the market value?—Undoubtedly.

2783. Of course when the definition of improvement was brought in in 1870, "anything which adds to the letting value," that meant the market value?—Yes, in 1870, there was no other value.

2784. There was no other value; and therefore, in applying that definition to the Act of 1881 you were applying a definition which was framed in reference to the market value, and not in reference to the case of the fair value, is not that so?—Yes, that is so.

2785. Therefore the landlord does not really get the increased letting value, or what was meant by it in the Act of 1870?—No, not in that sense. Of course I may say, though, with reference to that, that there may be an increased value, even under the Act of 1881, that is, the fair value may give an increase to the landlord.

2786. What I am pointing out is this; do not you see that when you are talking of the landlord getting all the additional increase, he does not get the market increase?—Oh no.

2787. That is all I want to show. You must take that in relation to the reduction that is given by reason of the Act of 1881?—Oh, certainly.

2788. I have very little more to ask you, but I want to know this: you have said here (and I think it might properly be open to misconstruction) that the fair rent order is not impregnable?—Yes.

2789. Am not I right in suggesting to you that it is impregnable in every case in which the Land Commission have jurisdiction?—Yes. I think I stated that really.

2790. It rather seemed to be open to misconstruction,

Mr. *Carson*—continued.

struction, and I have had some letters upon the subject?—I have said it I think.

2791. You say that they are impregnable in every case in which the Land Commission Court has jurisdiction?—Quite so.

2792. And I suppose no court's order is impregnable if they act outside their jurisdiction?—Certainly not, especially Statutory Courts.

2793. Now have you ever found in your experience an order of the sub-commission not impregnable; I mean in cases that came within your own experience?—I could not really answer that, for this reason, that except it is specially brought to my attention afterwards, I know nothing about it.

2794. Do you know of any such cases that were afterwards brought to your attention?—The only case I can really speak with authority about is the case I quoted. I think it was in answer to Mr. Healy, a case from Downpatrick.

2795. Was it Quinn's case?—It was Quinn's case.

2796. Now I just want to ask you one question about Quinn's case. In Quinn's case, as I understand, the county court judge had given the decree before the fair rent was fixed at all?—Yes.

2797. And what the judge upon appeal held, apparently, was that as the decree had been given, his only duty was to see whether that decree was right; that the decree could not be influenced by anything that took place subsequently?—I did not see the reasons of the judge of assize; I saw no report of his judgment.

2798. You saw no report of his judgment; then you do not know?—All I know is that he gave a decree.

2799. But so far as it was attempted to alter the decree by reason of the fair rent, that would be attempting to alter it by something subsequent to the giving of the decree?—Yes; but the 13th Section of the Act provides for that point.

2800. Was there an application under the 13th Section of the Act?—It is not necessary to have an application.

2801. In which case?—I shall read it for you. Reading the 13th Section, Sub-section 3, in connection with the 20th Section, and in connection with the case of Montgomery *v.* O'Hara, which illustrates it; taking those three together, I arrive at this.

2802. You see the 13th Section specifically provides that there is to be an application to stay proceedings?—Yes, but you see that having regard to the 20th Section and Montgomery *v.* O'Hara ——

2803. Never mind the case; take the 13th Section itself; is there anything in that?—Shall I read it for you?

2804. I have it here; you need not read it. Do you really say that an application is not necessary?—What I rely upon is this: That Section shows that where proceedings have been taken "before or after an application to fix a judicial rent, and shall be pending before such application is disposed of, the court before which such proceedings are pending shall have power, on such terms and conditions as the court may direct, to postpone or suspend such proceedings

Mr. *Carson*—continued.

until the termination of the proceedings on the application for such judicial rent; and the pendency of any such proceedings for compelling the tenant to quit his holding shall not interfere with the power of the court to fix such rent, or with any right of the tenant resulting from the rent being so fixed; and in such case any order made by the court for fixing the rent shall operate in the same manner as if such order had been made on the day of the date of the application." Then as an explanation or reading of that Section, Lord Ashbourne, in Montgomery *v.* O'Hara, reading that in connection with the 20th Section, lays down that "it is clear that any tenancy to which the Act applies can only be deemed to be determined when the landlord resumes possession of the holding."

2805. I am aware you have stated that; it is in your evidence already; but what I want to know is something else?—"So that it is competent for the tenant te exercise the power which the Act gives him, at any time after the service of the notice to quit, and before possession is taken by the landlord, no matter whether the originating notice has been served before or after the notice to quit expires."

2806. Do you think that has any application to where a judge is re-hearing an appeal, a case determined before the fair rent application was heard?—I assume that Mr. Justice Holmes decided it on the ground that we had no jurisdiction to fix the rent.

2807. But you do not know what he decided?—No, I assume that was his ground.

2808. You were not then quarrelling with the decision of Mr. Justice Holmes at all?—Certainly not.

2809. Now I just want to ask you a question with reference to Conroy's case. In Conroy's case it has turned out, as you have already explained, that there was an additional take?—Yes.

2810. Therefore, there was no old existing tenancy?—That is so.

2811. Have you known any case in your owu experience, or can you refer us to any case where there was simply the question of where a new tenancy was created, where there was held to be a surrender by operation of law?—No.

2812. You stated on the last day, you know, that this decision has re-introduced the old doctrine of surrender by operation of law?—I meant the old doctrine that was in existence before the Act of 1881.

2813. That is what I mean; the old doctrine that was in existence before the Act of 1881. I want to know this: can you show us any case in your own experience where that has been so held. I know you say that is the effect of the judgment; but then in Conroy's case there was the additional take. I want to know, can you refer us to any case where, upon the bare fact of the tenant having taken a new tenancy without any change in the holding, it has been there held that the doctrine of surrender came in?—You must remember that Conroy's case is a very recent decision.

2814. I know that; I merely wish to know, as a matter of fact, do you know of any such case?—Mr. Justice Bewley did consider it in a

Cork

Mr. *Carson*—continued.

Cork case the last time he sat at Cork; but not having the official report of the decision before me, I would not like to rely upon it.

2815. Under the old doctrine of surrender by operation of law before the Act of 1881 you might imply an intention on the part of the parties?—That is so.

2816. As I read Conroy's case, the intention must be proved expressly?—It is expressly stated that surrender depends upon intention.

2817. I know; but there is a difference in the implication by reason of the circumstances; a difference between that and the actual proof that it was the intention; for instance, you might produce a letter, or show a recital in a deed, or something of that kind?—Yes.

2818. That would be different from the implication that arose under the doctrine of surrender by operation of law before 1881?—Yes.

2819. I put to you that Conroy's case does not re-introduce the old doctrine?—My reading of it is that if I had to decide a case of this kind to-morrow, I should certainly read it as a case that would permit me to dismiss an application where there was no change in the tenancy, but where I was confident that both parties intended a surrender by operation of law.

2820. Without any specific evidence of that intention?—For the purpose of surrender by operation of law, it is sufficient as you know.

2821. And you would hold that that came within Conroy's case?—Unless there was evidence to show that the parties did not intend to destroy the present tenancy; that is my reading of the decision.

2822. That is not mine; but you are giving evidence, and I am not; at all events, you do not know of any case that has, in effect, decided it?—No.

2823. There has been none, has there?—There has been none to my knowledge.

2824. I just want to ask you this, and I think it is the only other question I have got to ask you; under the 9th section of the Act of 1881 the Court can take (in any applications under the Act) into account the reasonable or unreasonable conduct of either the landlord or the tenant?—Yes.

2825. Has that section ever been acted on at all?—Hardly at all.

2826. Do you know of any case; did you ever act on it?—I acted on it once; but I was reversed.

2827. Then I may take it that it is practically not acted upon?—No; practically not.

2828. Do you know whether it has ever been proposed to act upon it in relation to applications under Section 13?—No.

2829. Do you see any reason why it should not be?—No, I certainly see no reason.

2830. In this case, for instance, where tenants apply to have proceedings stayed?—No, I think it would be a very reasonable method of applying it.

2831. But you are not aware that it has ever been done?—No, it has never been done to my knowledge.

2832. I see under the 13th section tenants have a right to sell, pending ejectment?—Yes.

2833. And even after a decree has been given in ejectment for non-payment of rent?—Yes.

Mr. *Carson*—continued.

2834. Do you know whether that right is availed of by the tenants?—I can recall no instance of its having been done; but then I cannot speak with any special knowledge. Those cases do not come before me.

2835. They would not come before you?—No.

2836. I suppose if there are any such cases there would be records in the office, of applications for time, to give them time to do that?—I expect there would, but I have no knowledge as to that.

2837. As regards Adams *v.* Dunseath; which I am not going into; will you tell me this; has it any application to where there is the Ulster tenant right?—No

2838. It does not affect it at all?—It does not affect it at all.

Mr. *Hayes Fisher.*

2839. You have stated, without giving any very accurate estimate, perhaps, the number of the holdings in Ireland, and that fair rents have been fixed on about half the holdings?—We had a considerable discussion this morning on the figures.

2840. You said, roughly, about half the holdings?—Yes, rather more, I think.

2841. I think I may also gather from your evidence that on that half on which fair rents have not been fixed, a great many have not taken advantage of the Act, because they are satisfied with their present rents; and that the remainder, the others, have not taken advantage of the Act; first, because of the unquestioned operation of the Statute excluding them, and, secondly, because they are excluded by judicial interpretation put upon that Statute?—Yes.

2842. Now have you any means of forming any approximate estimate of the proportion that would be borne by each of those under those heads?—No, I do not think it would be possible to make any accurate estimate.

2843. May I just refer you to a question put by Mr. Sexton (*Q.* 1381). You have told us that there are 47 restrictions and exclusions. Have you any means of forming any approximate estimate of how many of those who have been excluded from the operation of the Act have been excluded under any one of those particular heads?—No accurate estimate could be given; but, of course, most witnesses acquainted with the Irish land question could give a very good opinion as to the relative importance of those exclusions.

2844. But it could not be put in figures?—No, I think not.

2845. Not even over a small area?—No, I do not think so.

Mr. *T. W. Russell.*

2846. Would you say that in Ulster, for example, perhaps the sub-letting was the principal thing?—Yes; one could give general evidence of that kind, but not of anything particular.

Mr. *Brodrick.*

2847. You told us, at Question 2325, that Mr. Commissioner Fitzgerald "is preparing a tabular statement of the number of cases excluded"?—That is of those that have been already excluded.

Mr. Lawrence Doyle, called in ; and Examined.

Chairman.

2848. You are a legal Sub-Commissioner?—Yes.

2849. How long have you been in that position?—I was first appointed a lay Sub-Commissioner in December 1881 ; in April 1882, I was appointed to be a legal Sub-Commissioner ; then I continued until December 1885 ; at that time the staff was reduced, and I was off the Commission until September 1887 ; I have been on since then.

2850. You have heard the evidence given by Mr. Bailey, the whole of it?—Yes.

2851. May we take it, generally speaking, that the practice he has described as the practice of his Sub-Commission, is also the practice of yours?—Oh, yes ; I think he has described the practice quite accurately.

Mr. *Macartney.*

2852. Upon the question first of all the exclusions and restrictions from the Act, do you agree with him?—I do not exactly know what is meant by the "restrictions."

2853. The restrictions, I understand, from Mr. Bailey's evidence, are the exclusions from the Acts which are the results of the judges' decisions?—Well, I cannot separate the result of "Judges' decisions" from the Act ; it is all part of the law. No judge would, of course, admit that he made a new restriction.

2854. What I want to ask you is this : whether in your opinion there is not a very considerable difference in the number of cases that would be excluded from the Act by these various causes?—Certainly.

2855. Some are absolutely immaterial?—Some of them I never heard of, at least, they never turn up in practice.

2856. And some are material?—Yes.

2857. Could you tell the Committee what, in your view, are the most material points?—Of course there have been a good many exclusions on account of the letting being for pasture. In some districts that occurs pretty often ; and of course a great many cases are excluded that do not come before us, because they are so clear, that they do not bring them forward. A good many have been excluded because they are not agricultural, pasture holdings, mill holdings, and so on, and a good many of course, for sub-letting. I think those are the most important cases that turn up. Town parks of course, in some cases, turn up very often.

2858. From the practice of your Sub-Commission, might it happen that the judicial decisions, on the question of pasture holdings, have compelled you, following the decisions of the superior courts, to exclude cases in which the tenants were mainly agricultural tenants, and a good deal of the land in tillage?—No, certainly not. No case has been excluded in which the land was not let mainly for the purposes of pasture.

2859. And on the question of sub-letting ; the

Mr. *Macartney*—continued.

sub-lettings which have operated in excluding cases from your Court ; can you say whether those sub-lettings have been made for the purposes of the holding, or for the use of the holding, or not?—Oh, no.

2860. Did it transpire in evidence before you?—Do you mean for labourers?

2861. Yes?—No ; I do not recollect a case.

2862. Take the case where there are four or five sub-lettings on a holding ; would it be the business of your colleagues, the lay Commissioners, to ascertain, or would it transpire before you how the men who occupied these sub-lettings employed them?—Yes. I do not recollect a case where the point raised was that the sub-letting was for the use of the labourers on the holding.

2863. In many cases it might happen that they were not for the use of the labourers, might it not?—Yes ; that is a class of case in which the point is raised ; but I do not think I ever heard the point raised in such cases.

2864. There is a question I should like to ask you affecting new tenancies created by an assignment upon marriage (I think it was a questirn put by Mr. Healy), is that a frequent occurrence in your experience?—No, I never had the point raised on a settlement, or anything of that sort, or a family assignment.

2865. In your experience you have never come across such a case?—No ; of course, legally, it has come within the definition of "assignment."

2866. I am talking of your actual experience?—I have never had the objection raised.

Colonel *Waring.*

2867. Mr. Bailey gave us an answer with regard to the manner in which you arrive at a fair rent. You, having the advantage of having been a lay Sub-Commissioner, perhaps can tell us a little more definitely than he did what it is?—I think he gave a very accurate description of it.

2868. The answer to the particular question I am alluding to (707) was, "that depends." It appears to me to be rather vague?—Yes, that is general.

2869. I am afraid that does not bring it very much nearer?—The usual process is that the holding is valued as it stands.

2870. I want to know how you arrive at that. By what means do you judge the capabilities of the holding ; do you judge its power of carrying cattle, if it is a grazing holding, or a holding largely occupied with grazing, or do you judge its productiveness of any particular description of crop, and, if so, what sort?—We do not go in detail into that ; we go out and dig holes in the land, which is considered a very important part of it. The valuers estimate its value, I suppose, principally by comparison with other land that they know.

2871. To use a popular expression, they "smell the end of a stick, and say '15*s.* an acre'" I am afraid we cannot get any nearer?—I am

Colonel *Waring*—continued.

—I am afraid we cannot get any nearer. The valuer uses his knowledge and experience.

2872. Now with regard to tenants' improvements, you do not go behind 20 years before the passing of the Act?—No, before the passing of the Act of 1870.

2873. How do you arrive at the proportion between "fair" and "competition" rent?—I do not know, I never heard the question discussed. I have heard valuers in Ulster (but I consider it a very absurd sort of valuation), in order to account for the very high value of Ulster tenant right that is sometimes put on, say that there is what they call a competition rent, which is an exorbitant and ridiculous rent, and one which nobody would pay; then they deduct, in order to get at the fair rent, what they consider to be the fair annual value of the tenant right, and in that way arrive at what they call, in other parts of the country, "fair rent."

2874. Are you not aware that some people do actually pay this "absurd" rent, but not to the landlord?—I know that some valuers have put on rents that nobody would pay, for the purpose of making room for deduction on account of the Ulster tenant right.

Mr. *Sexton.*

2875. You define the "competition rent" as a rent that nobody would pay?—No, nothing of the sort. I say what they call competition rents are rents that nobody would pay; and it was not alleged that anybody paid such rents, in fact.

Colonel *Waring.*

2876. Then as to deterioration of soil; do you take into consideration the fact, that, instead of being improved, the soil is in a worse condition?—We ought to, but I am very much afraid that sometimes, when the soil has deteriorated, the tenant gets the benefit of it. It is a matter that it is very hard for a valuer to take into account properly. On the other hand, if the land is in an usually good condition, it is very hard to make proper allowance for that too.

Mr. *W. Kenny.*

2877. Mr. Bailey gave a definition of what was his notion of competition value, or market value; he said it was what the holding would let for, if it was in the hands of the landlord, and he was letting it in the open market. Do you agree with that definition of his?—That is, undoubtedly, the competition value, I should think.

2878. If the landlord was letting it?—Yes.

2879. Do you also agree with him, that you fix a fair rent, which is about 30 per. cent below what the landlord could let the land at in the open market?—Yes; but then I do not think the landlord could let it at 30 per cent. over what we fix it at, to a good tenant; I would say that.

2880. Do you differentiate it on the ground of getting a good tenant?—Yes; a "competition" value is not what the landlord ever did let the land at; I mean the highest rent he can possibly get from any tenant.

2881. Mr. Bailey, in reply to Mr. Carson, has

Mr. *W. Kenny*—continued.

put it in that way; he said that competition value, or market value, would be what the land would fetch, if the landlord had it in his own hand, and was letting it?—Yes; not caring whether the tenant was a solvent one or not.

Mr. *W. T. Russell.*

2882. In other words, not caring whether he paid the rent or not?—Permanently; I should say that is what it means.

Mr. *W. Kenny.*

2883. You are putting it upon the ground of getting a good solvent tenant?—I think so. I think it ought to be what the landlord could get from a good solvent tenant, subject to anything allowed for tenants' improvements in the holding.

2884. You would not make any deduction, then, in that definition from what the competition rent or the market value rent, would be, in settling the fair rent?—I think not. I never could understand the meaning of a deduction being made for the occupation right of a tenancy; that is to say, that because a man has been there for some time, he ought to pay less rent now than he would if he only came there last year.

2885. So that, in your view of the case, the market letting value and the fair rent are identical?—No, I do not say so.

2886. Or should be?—No, I do not say that.

2887. Does it not come to that?—If put up to competition you may get a rent given, or promised, which would be entirely in excess of a reasonable rent.

2888. But you do not put the difference so high as 30 per cent., do you?—No, not letting for a solvent tenant.

2889. Is your experience when you come to see what improvements the tenant has made upon the holding that in many cases he under-estimates?—No, I do not think he does.

2890. Then you do not agree with Mr. Bailey in that?—A great many of the improvements are knocked off in Court very often, because they are mere guesses.

2891. Those are the improvements specified by the tenant on the back of his originating notice?—Yes; at present he does that without measuring them; then he gets a surveyor to measure them, and the surveyor corrects that in Court.

2892. And you have to reduce them?—Yes, that is done by inspection.

2893. With reference to this question of limited owners, have you, in your experience, had many of those cases?—No; I have been trying to think; I do not think I have ever had a case of that kind.

2894. You do not think you have had any of those cases?—No.

2895. Is it your experience, that, whenever the landlord has got a legal objection to the settling of a fair rent, that point is thoroughly threshed out before you?—Oh, not every point, unless there is some particular reason. A good many points are waived because the landlord is very anxious to have the judicial rent settled, in many cases; in fact, the great difficulty in many

Mr. *W. Kenny*—continued.

cases now, is, to get the tenants to come into Court.

2896. Have you had any cases, in your experience, where the landlord lies by for the purpose of raising a legal point afterwards on ejectment or otherwise?—Oh, no. Of course I should not know anything about ejectment, because it would not come before me.

2897. Is it your experience that when the landlord does not desire to have a fair rent fixed, he does raise every legal point that it is possible for him to raise?—Every point that his counsel thinks of.

2898. Well, I suppose, that is putting it as high as you can. Mr. Bailey told us, and told us very clearly, indeed, the principles upon which he fixes a fair rent; I do not know whether the principles are uniform?—I should say that I know of no "principles"; if there are any I do not know where they are laid down. The Chief Commissioners have always refused to lay down any principles, and, of course, we have not laid down any general principles.

2899. In point of practice do you proceed upon the same basis as Mr. Bailey does; do you value the holding in its entirety, in the first instance without the buildings?—Yes, that is the universal practice; as Judge O'Hagan said: "In Ireland this seems to be the inveterate habit;" so it is.

2900. To value the buildings separately?—Yes.

2901. And, accordingly, you either exempt the tenant from rent, or put on a percentage, for the buildings?—Not a percentage, we put a fair value on the buildings. It usually gives a very small percentage on the outlay, if the landlord builds them.

2902. Now I want to ask you as to one or two points in reference to a case in which your name was referred to. I think you fixed a rent, did not you, in the case of Mr. Villiers Stuart?—No, I think there was no legal Sub-Commissioner there. I think Mr. Trench was the legal Sub-Commissioner of that Commission, and he was away ill.

2903. Then you do not know anything about that?—No.

Mr. *Brodrick.*

2904. You said just this moment that you deduct, or that they deduct, I forget which you said, from the competition rent, the annual value of the tenant right, to arrive at a fair rent?—I say that I have heard valuers do that in the north of Ireland.

2905. Have you had experience in fixing rent in the south of Ireland?—Yes, very largely. I have been more in Cork than any other county.

2906. What is your experience there with regard to being asked to fix tenant right; have you been asked to fix the tenant right by the landlord in any case, where you fixed the fair rent?—Yes, in several.

2907. On what principle do you proceed?—There again the Commissioners have never laid down any principle; and we never lay down a principle I need hardly say; it is done by rule of thumb like fixing a rent; we put on what we think a reasonable man would give for the occupancy. Of course it makes a good deal of difference, the amount of tenant's improvements, buildings, and so on.

Mr. *Brodrick*—continued.

2908. Suppose there was no tenant's improvements?—Then that is a very difficult question; it is very hard to say on what principle any value is put there; but a value is generally put on; we generally have evidence of auctioneers or valuers showing that a very large sum could be got for the tenant's interest, and without improvements.

2909. You first of all reduce the rent, then, possibly, reduce it; having reduced it, you are asked to fix the tenant right?—Yes.

2910. Improvements are not proved, and perhaps you have not before you any evidence that the tenant gave anything for the holding; then, as I understand, you take a shot at what you think somebody would give for the value of that holding on the reduced rent you fix?—We never put on as much as we think somebody would give at an auction.

2911. But, as a matter of fact, having reduced the rent, I presume you consider the holding more marketable than it would be if you had not reduced it?—Certainly; not that that makes very much difference.

2912. The rent does not make much difference?—Not as much as one would imagine, if things went on a reasonable calculation, it does not really.

2913. You mean that security is more important than rent?—Yes, that is just what it comes to.

2914. At all events, your experience is that men are willing to give larger sums where nothing has been paid, and no improvements have been proved?—Yes, very large sums in some cases.

2915. And those sums you feel bound to fix, although there is no evidence of valuable consideration?—No, we do not fix those very large sums. In that case, where there are no improvements, perhaps we take about five or seven years' purchase of the rent, or something like that.

2916. Have you given as much as 10 years' purchase in some case?—Yes; if there have been exceptionally good buildings, or if the holding has been small. Of course a small holding will always bring a larger number of years' purchase than a large holding.

2917. Having given the tenant a valuable property, for which he paid nothing, do you consider that he is damaged by the landlord having the right of pre-emption?—Of course he is damaged to this amount, that he might get more, if there was an auction, if he was allowed to sell. He is damaged to that amount. Of course he might not get as much.

2918. With regard to town parks, do you consider that the Act has been strained in order to create town parks?—Oh, no! I do not think so. I have never known a case of a town park excluded in which I did not think it was really a *bonâ fide* town park. I have known cases of rents fixed on things that I thought town parks.

2919. I suppose you have had experience of town parks in some of the small towns as well as in Cork?—Yes.

2920. Therefore you find that claims of town parks are, as a rule, for properties which would be

Mr. *Brodrick*—continued.

be so designated?—Yes, they are *bonâ fide* town parks.

2921. I suppose, if an agricultural rent were fixed on those properties it would be a hardship to the landlord?—Oh, yes, undoubtedly.

2922. Do you agree with the evidence which has been given with regard to a number of tenants who have not gone into Court. Do you hold that it is correct to suggest that the large number of tenants who have not gone into Court have not done so from some flaw in the Act?—I have no means of knowing that. I can only say that a great number of the men who come up now, on being called upon to explain why they have been so long in coming generally give the reason that they have been getting large abatements. That is all I know about it.

2923. Do you find that you are making larger reductions now than you were?—Really I cannot say that; I have never calculated the percentage.

2924. In making reductions are you guided by the state of prices at all?—Yes; there is no express calculation made each time the rent is being fixed, but of course every valuer has that in his mind when he values land.

2925. What would be your feeling with regard to the large number of rents which must be fixed again within the next few years?—I agree with Mr. Bailey; I think a good many of those could be fixed by one or two valuers without a hearing in court; but I agree with Mr. Bailey also that it could only be done in cases where there would be no squabble on the land about improvements and so on, there are a great number of cases where it could be done.

Mr. *T. W. Russell.*

2926. What Mr. Bailey calls non-contentious cases?—Yes.

Mr. *Sexton.*

2927. By the parties agreeing?—By the parties agreeing that either no improvements are to be claimed, or that they are claimed and allowed.

Mr. *Brodrick.*

2928. And agreeing also upon the procedure?—Oh, yes, agreeing upon the procedure.

2929. Do you hold that it would be possible to take a large class of these holdings, on which there is no contention, and fix the rent without a fresh valuation, or do you think a fresh valuation would be necessary in each case?—I think that a fresh valuation would be necessary in each case. I do not think the parties would be satisffed without a fresh valuation; I do not know how it could be done otherwise, unless by a scale of prices, a sort of sliding scale, or something of that sort, I mean in what we call contentious cases. I think that must be done.

2930. In the case of a holding which has greatly deteriorated since the rent was fixed 15 years ago; how would the Act operate?—I think the rent would be reduced.

2931. You would not reduce the rent in consequence, would you?—No; but, as I said before, it is impossible for a valuer not to be affected by the state of the land as he sees it. Of course, he may make some allowance in his own mind for deterioration by the tenant, and so on, but. in practice, I think a deteriorated farm is fixed at a lower rent than a farm in fair condition.

2932. If you found land very foul you would be bound to fix a lower rent on it, would you?—No; I think we should be bound not to fix a lower rent; we should fix the rent of it as the land ought to be; notwithstanding that, I think that the effect upon the valuers of deterioration is to reduce the valuation.

2933. In speaking of the effect upon the valuers you are speaking also of the effect upon your lay colleagues, are you not?—Yes.

2934. In a case of that kind would you feel yourself justified in going above the rate fixed by both your lay colleagues, or would you feel bound by their decision?—I have no means of ascertaining whether there is deterioration or not; nobody can say really without looking at the land; I feel bound by what my lay colleagues do.

Tuesday, 29th May 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Macartney.
Mr. Clancy.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr Fuller.	The Solicitor General.
Mr. T. M. Healy.	Mr. Sexton.
Mr. W. Kenny.	Colonel Waring.
Mr. Leese.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

The Right Honourable GERALD FITZGIBBON, P.C., called in; and Examined.

Chairman.

2935. WE know of course, all the Members of the Committee are aware, that you are one of the Lords Justices of the Irish Court of Appeal?—My precise position is that of an ordinary member of the Court of Appeal since 1878; 15½ years.

2936. Before that you had been a circuit judge, had you not?—Not before that, but at the same time. I was never on the Bench until I became a judge of the Court of Appeal; but down to 1885 the ordinary judges of the Court of Appeal went circuit, and we have gone occasionally since.

2937. Then you are here to-day in consequence of a communication made to you by the Irish Lord Chancellor from me, are you not?—The Lord Chancellor first spoke to me and told me that he understood that it was desired that some information should be given direct to this Committee bearing on the matters referred to them so far as they are within the cognizance of the Court of Appeal; and he said that, as I was the only member of the Court now (unhappily) surviving who had been all through this business, although the Chief Baron is my senior, and has heard part of it, he thought that I would be the best able to give the information required. I told him I could not volunteer to come, and I told him I could not say that I was willing to come without consulting all my colleagues. We then got a letter stating that you, as Chairman of the Committee, wished that I should attend. All the members of the Court met, and they were all of the opinion, for the reason I have given, that it was I who should be selected to attend, and I am here, with their concurrence, to give you any information in my power. I am sorry to say I have had but a short time to prepare, and further that this is our holiday time, the Whitsun recess, and that I am due back in my Court on Monday next.

2938. You are prepared to give evidence to the Committee, and to assist them in their inquiry, in the terms of their reference, as to the principles and practice under the Land Acts, so far as they have come within the cognisance of the Court of Appeal, or are affected by the decisions of that Court?—What I have tried to do, in preparing to give you any evidence that the time has allowed me to gather together, has been to go through my own notes of all the Land Commission cases that we have heard.

Chairman – continued.

2939. Your notes as judge you mean?—They are really my own private notes. To have gone through the records of the Court would have been an endless task. I have gone through my own notes, which I index from year to year, and I have taken out a short note of each of the cases that have come before the Court of Appeal since 1882; and, as far as I am myself concerned, I am prepared to give you any information about those cases. I can hardly speak for what is within the knowledge of my colleagues, and I certainly cannot speak for anything that has taken place in any other court.

2940. Mr. Commissioner FitzGerald told us, I think, what the constitution of the Court of Appeal was, but we should, perhaps, like to hear it from you?—The constitution is this: The Lord Chancellor for the time being, and two ordinary judges, commonly called Lords Justices, of whom I am one, are the constant members of the Court. Besides those the Chief Justice of Ireland, the Master of the Rolls, the Chief Justice of the Common Pleas (so long as that office existed), and the Chief Baron, in rotation, are members of the Court.

2941. One at a time, do you mean?—Not exactly. On the first day of each sitting these judges meet, and they endeavour, as far as possible, to arrange to come into our Court when their own engagements in their own Courts permit, in rotation. Our quorum is three; we must have three to hear any final appeal, but in Land Commission cases, and in Appeals from more judges than one, we endeavour, whenever we can,

Chairman—continued.

can, to have four judges. I think in the majority of the Land Cases the decisions are the decisions of four judges; but there are a good many in which there were only three.

2942. Then there is the one great case where there were seven?—I should have mentioned, also, that there is a provision in our Act that any ex-Chancellor can become an additional judge of the Court of Appeal, under the Sign Manual, and after Lord Chancellor Naish ceased to hold the office of Lord Chancellor, he was appointed by the Queen an additional judge. Until his health, unfortunately, broke down he was, I may say, a constant member of our Court. During that time we were able to make a Court of four, you will observe, without calling on the judges who had other engagements. The Lord Chancellor is, sometimes, not able to sit with us, and then we get one of the others or two of the others to take his place.

2943. On one occasion, and one occasion only, I think, in the great case of Adams *v.* Dunseath, you had a full Court of seven?—There is a power in the Land Act for the Land Commission of its own motion to state a case on a question of law for the consideration of the Court of Appeal; they did that once, in a case that they stated to be of importance, the case of Adams *v.* Dunseath, and on that occasion the seven judges sat together. We have sometimes had cases that we ourselves thought of importance, or cases in which there had been a difference of opinion when three judges were first hearing them, and in those cases we have tried to get either four or five judges; I think five have sat twice, and four very frequently.

2944. Then yours is the only Court of Appeal from the High Court, and the other Civil Courts in Ireland. Would you tell us what is the procedure in reference to the Land Commission?—We are the Appeal Court for all civil matters, I may say, in Ireland, with some very trifling exceptions, from cases stated from County Courts, and Registration Appeals, to Appeals from the Chancery Division, the Common Law Divisions, the Probate, Bankruptcy, and other tribunals. The Land Commission Appeals come before us in two ways, and two ways only. They are under the 48th Section of the Act of 1881. The Land Commission of its own motion, or on the application of either party, may state a case in respect of any question of law. That power is strictly confined to questions of law, and we can take no evidence then; we must go entirely on the facts that are stated on the case. The Land Commssion is obliged to state a case, on the application of the party, unless the application is frivolous or vexatious in their opinion; therefore, every substantial question of law, if it be capable of being evolved into a question of pure law, comes up in that way. There have been many such cases; but it is not the ordinary way of hearing appeals, because every lawyer knows that being tied down to a statement of facts is not a satisfactory way of dealing with cases in which issues of fact are concerned; accordingly the Land Commission is also given power (but this is a discretionary power) to permit any party aggrieved to appeal in respect of any matters, with an exception that I will mention in a moment. On those appeals, questions of fact or law, or mixed questions of fact and law, come up for our consideration; but there is a very large exception. There is no power to permit any appeal in any matter in respect of the amount of rent, of value, of damages, "or any matter left in the discretion of the Land Commission." As to these, I am thankful to say we have nothing to do with them.

Chairman—continued.

2945. "Fair rent," "value," and these discretionary matters are all excluded, are they?—We can have nothing to say to them.

2946. We have heard of the difference; will you give us your distinction, which will be an authentic one, between an appeal and a rehearing?—That is an important distinction. The 44th Section of the Act of 1881 is the section under which Sub-Commissioners decisions are reviewed, and an absolute right of rehearing is given by that Section:—"Any person aggrieved by any order of one Commissioner, or by any order of a Sub-Commission may require his case to be reheard by all three Commissioners sitting together, except in the case of the illness, or unavoidable absence of any one Commissioner," which I need not trouble about. Those are rehearings, and as far as I know, that is the only shape in which Sub-Commission decisions come up to the Land Commission. I am now speaking a little outside my own Court, but I am telling you what is in the Act of Parliament. We had a very curious appeal about that; it may not be necessary to mention it again, so I mention it now. Some rules were brought out early in the proceedings by which a stamp was put upon "notices of appeal," and the Land Commission refused in one case to hear notices of a rehearing, because they were not stamped; the party appealed to us, and we held that it was a tax that they had no power to put on without rules regularly made, the rules authorised the stamp only on "notices of appeal," and we held that "appeal" did not include "rehearing," in a taxing statute. Accordingly we sent the case back to be reheard; but of course it was only a technical point of which the party had a right to take advantage. New rules were made, and I believe there is now a stamp on rehearings, but when I speak of an appeal (I should make that quite clear) I mean an appeal from the Land Commission to the Court of Appeal; there is no appeal direct from any Sub-commission to the Court of Appeal.

2947. Now what are your materials when these appeals are brought before you?—On the cases stated, the case, and nothing else; in the case of appeals, we have a shorthand report of the evidence, and we always have a report of the judgment of the Land Commission, or at least of the Judicial Member of the Land Commission; sometimes of them all. Occasionally it has happened accidentally, that it has not been either a shorthand or an authorised report; but, as a rule, we have an authentic report of the judgment, and we always have the shorthand report of the evidence. We have, I may say, all the materials that the Land Commission had, so far as they are available,

Chairman—continued.

available, except the oral testimony. We get the Reports of the Sub-Commissioners which we commonly call "the pink paper"; and we also get the official valuer's report, which we know as "the white paper." We have the documents of title, on which a great deal often turns, and occasionally we have newspaper and other reports of the hearing before the Sub-commissioners. We have the power to call for further evidence whenever we want it, and on two or three occasions (but they were very exceptional) we have heard witnesses orally. On many occasions we have allowed cases to stand over for production of documents and additional evidence of that kind.

2948. Do you allow newspaper reports to go for much?—We are always very anxious to try to learn, not only in these land appeals, but in all appeals, the opinions that we have to review. There have been many eminent lawyers amongst the Sub-Commissioners; for example, Mr. Commissioner FitzGerald, Judge Kane, and Mr. Trench, many of whose judgments were reported; but sometimes we have only a country newspaper report; the report in "The Irish Law Times," we often have also. I may say, once for all, that we are not strait-laced about getting any information we possibly can, bearing on what took place in any of the courts below, and in several instances the decisions of the Sub-Commission have been restored where we differed with the Land Commission. Sometimes we differed with both.

2949. As to reporting, I think the Committee was rather surprised to find that there is no fully authorised series of these very important decisions of the Land Commission. Your judgments, of course, are always reported authentically, are they not?—There is exactly the same report in Ireland as there is in England, of proceedings in the Court of Appeal.

2950. Of the Court of Appeal?—I do not know that there is anything exceptional in Ireland. There is a Council of Law Reporting in England, and there is a Council of Law Reporting in Ireland, consisting entirely of members of the Bar. They publish, as a private undertaking, all the legal reports that are thought of sufficient importance, including the reports of the Court of Appeal, and of all the Divisions of the High Court, including the Court of Land Commission, but they do not publish reports of county court proceedings, nor of Sub-Commission proceedings.

2951. We are given to understand, and I should like to be well informed upon that, that there is no series of these decisions published. I tried before this Committee to get a series of Land Commission judgments (decisions), and I was told that such a series did not exist; I presume that as regards your Court the whole series of your Land Judgments one may have access to in some authentic version?—Oh, no; they are not all reported, nor are the judgments of any court I know of, all reported. There are only those cases reported in which any matter useful to the profession is dealt with.

Mr. *T. M. Healy.*

2952. Is it not a fact that it is only since Judge Bewley was appointed that the Council have published any of the Land Commission reports, and that they declined to report Judge O'Hagan or Mr. Litton?—I do not know about declining to do it. The Council of Law Reporting has no judges upon it; we have absolutely no voice in determining what judgments of ours are to be reported and what are not. The profession decide what cases are useful and what are not; and they publish only those they think useful; but I certainly have seen some reports of Mr. Justice Bewley's judgments; and a great many of Mr. Justice O'Hagan's judgments are reported in publications that came out formerly; there are McDevitt's land cases and Donnell's land cases and others; but the authorised series of reports is entirely in the hands of the Council of Law Reporting.

Mr. *W. Kenny.*

2953. Is there not a special reporter attached to Mr. Justice Bewley's Court?—I know nothing about any Court but my own. I wish to confine myself as far as I can to my own Court. We have two barristers attached to our Court who are paid by the Council of Law Reporting, who select the cases, under the approval and directions of the Council, that are to be printed; they send us their reports, we revise them, and very often when we have written our judgments we hand them the judgments, and they cut them down a little for publication. I might mention, because I think you ought to know it, that at one time Mr. Justice O'Hagan informed me that the Land Commission wished to have all the cases affecting land appeals reported for them, not for publication in the reports but for their office, and immediately we said that any reports that they wished for should be at once revised and sent to them; I cannot tell you whether that goes on still or not. The revision does not appear to be asked for in all cases. We have so many judgments to revise that we only revise those that are either asked for or are sent to us, but the Land Commission can have them all for the asking.

Chairman.

2954. Now, as to the number of cases on Land Act questions that have come up to your court on appeal and the number of decisions, how many are there?—I have prepared two tables which will give you an idea of the quantity of business.

2955. Give us the totals only, if you please?—I will just make one general observation upon the annual totals, if you will allow me. The Judicial Statistics are published every year, and are available to everyone. Our officer has given me the returns that he sent in from 1882 to 1893 inclusive. During that time the Court of Appeal heard 211 Land Appeals. The numbers rather rose up to 1885, and they then fell, and became very small in 1889; but from 1889 down, in consequence of crops of questions under the Acts of 1887 and 1891, they have risen, and in the last four years they were

Chairman—continued.

were 12, 13, 29, and in 1893, 39 ; and from my own notes I know that we have heard 12 this year already.

2956. In the year 1894?—Yes.

Mr. *Sexton.*

2957. Have you any objection to hand in the tables?—I have prepared them for that purpose. Those are the Judicial Statistics; that is, obtained from the responsible officer. I also went through my own notes. I do not take a note if the case goes off, and therefore there are a few less in mine. Two hundred and two cases appear in my notes. I happen to have noted that the landlord appealed in 90 of these ; the tenant appealed in 112. Of the decisions, 107 went in favour of the landlord, and 95 went in favour of the tenant; but it is right to say that I treat cases stated on the application of the party as appeals, for I have told you already that it is the party who disagrees with the decision that asks to have the case stated on the question of law.

Chairman.

2958. Those tables you will hand in?—I will give you three. I have another also giving the subjects of the appeals. (*The documents were handed in.*) I may say that one decision (Adams *v.* Dunseath) on the case stated I could scarcely put down as one in which either landlord or tenant appealed, because it was sent by the Land Commission of its own motion; but I looked at our registrar's entry, and his entry is that the decision in that case was varied, not reversed.

2959. Was varied, not reversed. Those cases were heard in their due course by the Court as constituted for its ordinary business. What proportion of your ordinary Appeal business consists of land Appeals?—I have told you already that we are the sole Civil Court of Appeal from all these Irish tribunals. Speaking roughly, the land Appeals during that period amount to about one-ninth of all our business; and I hope you will kindly remember *that*, if you find that I am not quite up to every case, because only about one-ninth of the cases we have heard have been Land Appeals.

2960. You have, I know, classified the subjects of these Appeals into something like 15 or 20 classes, perhaps you will tell the Committee what the heads are?—I will hand in that as my third table if you will allow me, because it gives a line to go upon afterwards in dealing with the questions. Every sort of question of fact and law has become the subject of appeal, that is within our jurisdiction, and I have taken down, in each year, what the subjects of those 202 cases that are in my own notes were, the others of course I cannot tell. Of the exceptions from the Acts those under the 58th section of the Act of 1881 have been the most numerous, questions whether holdings are agricultural or pastoral, whether holdings are residential, whether they consist of demesne land, or are town parks, or are let wholly or mainly for purposes of pasture, or are let for temporary convenience.

2961. Those are the seven exceptions?—Those are seven distinct heads all coming under that one Section 58, the table will show you the numbers, those are the most numerous class.

2962. The town parks are much more numerous than any of the others, there are 38 town park cases?—There are 38 town park cases, and 19 demesne land cases. Of the town park cases, you will see from the table that 12 of the 38 came in 1893.

2963. Perhaps you will tell us about that when we come to the details?—They were chiefly questions under the Act of 1887.

2964. What other exceptions, except those, are there?—There have been 11 cases, and important cases, on questions of subletting, both under the original Act of 1881, Section 57, and under the Act of 1887, Section 4, which exonerated the tenant from exclusion in cases of trivial subletting; we have had two cases upon the question whether the subletting was trivial or not.

2965. Then what else; you may go pretty rapidly through this?—We have had a number of cases upon the status of the tenant, whether he was a "present" or a "future" tenant; whether he was in *bonâ fide* occupation or not; and we had several cases, and very hard fought cases, setting aside leases, under the 21st section of the Act of 1881, which had been procured from the tenant between the Act of 1870 and the Act of 1881; those have now passed over, it was a temporary provision. We have also had cases of resumption and pre-emption by the landlord. We have had two important cases as to rights to compensation on eviction under the Act of 1870; and we have had apparently 22, but really only two, cases on the Ulster custom; we had an early consolidated case on the Ulster custom about specified value, and we have had another lately; and we have had some questions on the Redemption Act and the Purchase Acts, and on procedure. The table will give you the figures.

2966. On the Ulster custom. I did not quite follow your explanation of why you have 22 down in this table?—Because one case was entered as 21, affecting 21 different holdings. I noted the consolidation for fear it should look as if I was multiplying the number; they were all heard together. It was a very important case. The registrar had them entered as 21 in his book, and I had them the same in mine; but I put the note "consolidated," to show that they were really one case.

Mr. *T. W. Russell.*

2967. One case governed the whole?—One case governed all. It was a very important case. The name of the case is M'Elroy *v.* Brooke.

Chairman.

2968. Under the Redemption of Rent Act there are three cases?—Yes. Questions have arisen as to what that Act of 1891 extends to; and there have been cases on the Purchase Acts, cases as to allowances for improvements, guarantee deposits, and things of that sort, and procedure questions which I do not think the Committee would wish to hear much about; in fact, as I have mentioned, and as you would expect, every sort of question has turned up.

Chairman—continued.

2969. Now, before going through your various decisions, under the most important at all events of these heads I should like to put one or two general questions. I think that the Committee, so far as I can judge—certainly including myself—feel that unprofessional persons must be perplexed beyond measure by the enormous difficulties of construction arising from the interdependence of the various Acts which refer to one another, in and out, of which you, as a Court I suppose, must have felt the difficulty not in the same degree, but the same kind of difficulty as we laymen. I should like to hear, if you will be kind enough to tell the Committee, an account of the relations of those Acts to one another, and any statement that you may care to make of the difficulties arising from those relations?—I can scarcely exaggerate the difficulty that has arisen in two ways. First: from the artificial system of definitions that exists in these Acts, by which we have first to learn a special language before we try to find out what the interpretation of a particular section is; we must know the language before we proceed to interpret it, and it is a foreign language to lawyers.

2970. It is a foreign language to lawyers?—Yes, it is "popular" language. Secondly: We have to construe all these Acts together.

2971. The language may be foreign, but it is made, after all, by lawyers, is it not?—That I do not know.

2972. In this House?—We are not permitted to look outside the four corners of an Act of Parliament for what it means.

2973. Very well, pray go on?—We cannot tell, for example, how much is original draft and how much is alteration; but when I spoke of a "foreign language" (I should be sorry to be misunderstood), what I meant was this: That there is a technical interpretation clause attached to nearly every one of these Statutes, and wherever the word that is interpreted occurs in the Statute, we are obliged to go to the technical interpretation, or definition clause, to find out what it means. I do not know whether this is what you want?

2974. Yes, quite so?—Then I will give you two instances.

2975. We have heard of this difficulty, at least some of us have, certainly, in listening to the evidence already given to us?—I suspect that you have assistance that I have not, because you try to understand these Acts of Parliament from speeches and discussions which we are not at liberty to look at. I will give you one instance: There is a Lincoln's Inn rule which every student has to learn, that is, that if you want to say the same thing ten times over, take care to say it every time in the same words; for if you make any variation, a difference of meaning will be attributed to you every time you change the word. In one Section (58), I find "hold," "occupy," "reside on," "live in," all used apparently interchangeably. I give that as an instance; *hold*, *occupy*, and *reside* all have legal meanings; *live in*, I presume, is a popular term. It would take too long to give other instances—there are plenty of them—but on the question of definitions I would just ask your attention to one, which is the most important of them all. We want to find out what a "present tenancy" is. You have to begin by the definition of "tenant"; this you find in Section 57 of the Act of 1881, page 315 of "Cherry": "Tenant" means a person occupying land under a contract of tenancy." A ordinary man might think he knew what a "contract of tenancy" was, but "tenancy" is defined. "'Tenancy' means the interest in a holding of a tenant." "Holding" is defined. "'Holding' during the continuance of a tenancy means a parcel of land held by a tenant of a landlord for the same term and under the same contract of tenancy." Those words you will find extremely material, because they make one single contract, and one single parcel of land, necessary incidents of every holding; you cannot have a holding under two contracts, because of that definition. But you have still to see what "contract of tenancy" means. It "means a letting or agreement for the letting of land for a term of years or for lives, or for lives and years, or from year to year." That again becomes vital, when we are dealing with the exceptions to the Act, because you will find that "holdings" and "tenancies" are exceptions, and we are driven by that definition to assume that it is possible that those excepted holdings may be holdings for terms of years, for lives, for lives and years, or from year to year; and then you have finally the last of the series, "present tenancy" is defined: "'Present tenancy' means a tenancy subsisting at the time of the passing of this Act or created before the first day of January, one thousand eight hundred and eighty-three, in a holding in which a tenancy was subsisting at the time of the passing of this Act"; put shortly, "present" means "present in time past," and "future" means "present."

2976. The result of all this must be rather confusing, is it not?—Well, it is technical, but I think it is important to show you that it is very necessary to be familiar with these Acts before trying to interpret them.

2977. Now, will you describe to the Committee what the relations, or the inter-relations, of these Acts are to one another?—The first Act of importance is the Act of 1860; it is important in its bearing upon the others, although it is in some respects obsolete. It made the relation of landlord and tenant in Ireland depend entirely on contract. We have none of the English doctrines about forfeiture and reversions, and things of that sort; they are all cut away in the foundation of the relation; the relation of landlord and tenant in Ireland rests on contract, and a "contract of tenancy" is the basis of every "holding"; the effects are important, but they are technical, and I do not think I need trouble you further with them.

2978. No?—The Act of 1870 then came; it first legalised Ulster usages, in the plural; it gave legal effect to whatever usages came under the common definition of the Ulster custom, but it left those usages to be proved in every case, and they varied very much indeed in different estates; they had a common nature, but the limitations were very numerous, and very

Chairman—continued.

very striking; I could hardly give you a more striking one than the one that was involved in Brooke *v.* M'Elroy.

2979. That we will come to later on?—I daresay you will come to that later.

2980. It was pointed out that the Ulster custom tenant was able to claim under the custom?—Every Ulster tenant got his choice. He could either come in under the Act of 1870 as an Ulster tenant, or he could claim his rights as an ordinary tenant. I had a good deal of experience at the Bar and elsewhere—and some special experience too—about this Ulster custom, and I should say that whether he would claim as an Ulster tenant or claim as an ordinary tenant, depend in each case on the usage he knew he was able to prove on his own estate. He had the power (this is established by decision) to prove that his was an Ulster custom estate by showing that all the land round it was affected by custom; but beyond that he had to prove, as a rule, what the custom was on his own estate; on many estates specific customs are capable of being actually proved. However, the effect of the Act was very simple—it made these usages, when proved, binding; previously, they were not binding at all in law"; but they were enforced by very strong sanctions in many cases.

2981. I do not think you need go through, unless you wish it very much, the limitations?—No.

2982. Because that has already, I think, been explained to the Committee?—Then we pass on from the Ulster tenant?

2983. Yes?—An ordinary tenant got two rights under the Land Act, 1870; he got compensation for disturbance, if he was put out by the act of his landlord, limited in amount and limited also by certain special provisions; and he also got compensation in all cases, that is to say, whether put out by his landlord or going out voluntarily, for his improvements. "Improvements" were defined, and the definition was a curious one; because the leading word by which "improvement" was defined was the word "work." The amount of the compensation was subject to limitations. These are all to be found in the Act of 1870, and they are important still; the tenant could not claim compensation for improvements more than 20 years old unless they were buildings or reclamation; he could not claim for any that were injurious to the landlord's estate; and by a clause of importance (Subsection C.) he could not claim for improvements executed in pursuance of a contract for valuable consideration.

2984. Will you explain that?—That meant that if the tenant had got, in money or in money's worth, anything from the landlord for his improvement in consideration of executing it, he could not claim compensation for it again, he having been, as it were, paid for it once already; but the consideration of course must have been a consideration coming from the landlord. There was an idea, I think, that it must be actual cash; but that matter was considered among others in Adams *v.* Dunseath, and I think the general opinion, and certainly mine, was, that if a landlord, for example, made a lease to

Chairman—continued.

a man for a certain term, and by agreement the rent was made lower than the actual value, and in order that the tenant might reclaim or might do anything of that sort, then he would be receiving in the amount that was taken off his rent because he was to make the improvement, money's worth. Anything he did under a bargain for value he could not be paid for again, having got the value. And then there was also a very important final paragraph in Section 4, on the same subject, by which in reduction of the claim, but not in extinction of it, length of enjoyment and some other things were to be taken into account; there were other exceptions, contravention of contract, improvements made by the landlord, &c., and there were certain cases in which compensation was expressly excluded, 31 years' leases, except buildings, reclamations, and manures, and cases where the tenant was permitted to sell and did not sell. Finally, there was an important section which I should mention also, Section 18; that all equities were to be taken into consideration; in fact they should have fair regard to the interest of the landlord, and to the interest of the tenant, and to all the circumstances.

2985. What are the exact words of that section?—I will turn to it.

Mr. *T. W. Russell.*

2986. "Equities between landlord and tenant" is, I think, the title of it?—It used to be called the Equity section.

Chairman.

2987. What number is it?—The 18th Section of the Act of 1870 is the reference I think.

2988. I think we might have the words of that Section 7 on the Notes?—It is page 170 of Cherry. "They shall take into consideration any such claim, objection, or set-off; also any such default or unreasonable conduct of either party as may appear to the Court to affect any matter in dispute between the parties, and shall, admit, reduce, or disallow altogether any such claim, objection, or set off made or pleaded on behalf of either party as the Court thinks just, giving judgment on the case with regard to all its circumstances." I think that is very much what I said.

2989. "Including such consideration of conduct"?—"Including such consideration of conduct as aforesaid."

2990. That is the operative part?—I do not know that wider words could have been used.

2991. This sum of compensation, so ascertained, was the interest of the tenant?—Under that Act, it was.

2992. I mean under the Act of 1870?—Yes; in the case of eviction for non-payment of rent or other default of the tenant, he got the improvements only; if the landlord put him out, he got both disturbance and improvements.

2993. Now will you tell us very shortly, because we have already heard something about it, as to the provision of the 57th Section of the Act of 1881, importing the Act of 1870 into it?—That is the first of those incorporating sections, and the terms of it are important. It is the last paragraph of the 57th Section. "Any words or

Chairman—continued.

expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act, and the Landlord and Tenant (Ireland) Act, 1870, except in so far as the same is expressly altered or varied by this Act, or is inconsistent therewith, and this Act shall be construed together as one Act."

2994. What now is the effect of that?—The legal effect of that is that you are to read the two Acts as one document, but that anything that is expressly inconsistent or repugnant in the earlier part is got rid of by the later part. It is the same rule that prevails with regard to wills, and it is the reverse rule that prevails with regard to deeds, which, for technical reasons, I need not go into; but is that the effect of it—we have got to read every word of the two Acts before we can attempt to construe either of them.

2995. It compels your Court, the Court of Interpretation, to qualify every term and apply every provision of the Act of 1870, unless there is an express difference?—Unless there is an express variance or an implied inconsistency. You know the general effect of the Act of 1881; the 1st Section gave a power to the tenant to sell his interest.

2996. You are now on the Act of 1881?—I am now on the Act of 1881. I pass from the 57th Section; it simply incorporates the Act of 1870, so far as it is not added to. The tenant may sell his holding. Mind; the subject-matter all through is "holding," which I have told you is one parcel of land held under one contract of tenancy; you cannot have two. There is power to sell, subject to certain restrictions; the landlord is to get notice; he is to have a power of pre-emption, and the tenant is to go regularly through the prescribed course. Then sub-division and sub-letting are prohibited.

2997. Unless the landlord consents?—Unless the landlord consents.

2998. Consents in writing?—He must consent in writing in order to make a sub-letting, or a division, of a statutory tenancy, binding under this Act.

Mr. *T. W. Russell.*

2999. May I ask, has the Court of Appeal construed "consent" to be consent in writing?—That is the subject of another Section, and of an amending Act of Parliament too; under the clause about sub-letting by consent the Court of Appeal has held that the consent must be active, or actual consent; mere acquiescence is not consent. There is a subsequent Act of Parliament that all formalities about consents that are required in leases may be got rid of; and if actual consent has been given in any case, whether it is in writing or whether it is not, that is enough for the purposes of that section. But this section that we are on now is the case of subdividing and sub-letting statutory tenancies, and there the Act says the consent must be in writing. Then there is a provision in the 3rd Section to keep the holding together: In case of a man dying

Mr. *T. W. Russell*—continued.

leaving several members of his family, a provision is made by which one will become tenant; but if there is nobody entitled when the tenant dies, it reverts to the landlord. There is a provision in the 5th Section of which the effect is that a statutory tenant may be evicted on notice to quit for breach of condition, and then the 4th, 5th, and 8th Sections enable the Land Commission to fix a fair rent on every holding to which the Act applies. That is every "present tenancy" as already defined, and then, under the 8th Section, in fixing the rent, you must have regard to a number of matters which it might be as well to mention.

Chairman.

3000. What is the principle, so far as you can find one?—The principle, as I understand it, is this: The tenancy remains as it was before, a tenancy from year to year. The tenancy from year to year sprung up annually by the fact that notice to quit was not served. Many metaphysical authorities as to its technical nature we need not trouble about. It was a tenancy that went on until it was stopped. The effect of this Act, as I understand it, is to prevent the landlord from stopping it; but it leaves it still a tenancy from year to year, to be stopped in the old way, only if the statutory conditions are not observed, but it may be stopped by the tenant just as before. The landlord cannot serve notice to quit, but I think it has been substantially assumed that the tenant can surrender it at any time if he chooses.

3001. Any time within the Statutory term?—Yes; the tenant would not be bound to go on paying the rent. You might have a solvent tenant whose rent was more than he would choose to pay, but I do not know that there is anything in the Act, I have never seen anything, to lead to the conclusion that the tenant is not, as he was before, a tenant from year to year, entitled to surrender his holding if he chooses.

Mr. *T. M. Healy.*

3002. The Recorder of Cork decided the contrary, did he not?—I am not aware of it. If so, the tenant could be sued, not only to the end of 15 years, but could be sued for the fair rent as long as the fair rent lasted. I do not know that we have ever had the question before us, but I have always assumed that every tenant from year to year can surrender his holding.

Chairman.

3003. Of course there is a very important class of tenants that the Act of 1881 did not deal with; I mean the leaseholders. Will you tell us something about that class?—The Act of 1881 did deal with them.

3004. Except in the 21st Section of the Act which dealt with them in a special way?—It dealt with them in a special way; but no leaseholder can get under the Acts at all, still, down to the present hour, unless he can get in under the provisions of the 21st Section of the Act of 1881.

3005. You mean that he cannot apply for a fair rent?—No. I was going to say it is a singular

Chairman— continued.

singular provision, he must always come back to this 21st Section; any leaseholder wanting to come in must get in under the 21st Section, or he cannot get in at all. There are several Statutes subsequently that enable leaseholders, who could not have come in under the Act of 1881, to come in; but they are all done on the same plan, namely, by making the man a man to whom the Act of 1881, Section 21, applies; but unless Section 21 applies, no leaseholder can come in; and it is very important to try to make this clear, because a great many of those questions of law that have turned up before us have been on this 21st Section.

3006. Tell us, if you will, and if you can, shortly, the sort of legal, shall I call it a juggle, by which the leaseholder was got into the 21st Section?—I do not think it is exactly that, but it is a very technical process. First, the section starts with an unequivocal provision that all leases existing at the passing of the Act shall continue to govern the holdings, and that, during the leases, those holdings shall not be governed by the provisions relating to tenancies in the Act. Then comes a proviso (and the words are important), "At the expiration of such existing leases" (I need not trouble about the "60 years"), "the lessees, if *bonâ fide* in occupation of their holdings, shall be deemed to be tenants of present ordinary tenancies from year to year." If it stopped there it would be simple; but it goes on—"at the rents and subject to the conditions of their leases respectively, so far as such conditions are applicable to tenancies from year to year"; that is to say, when the lease ends the leaseholder is at its expiration to be deemed to be a present ordinary tenant from year to year; but at the rent and subject to the conditions of his lease, so far as those can be made applicable to a tenancy from year to year. Now, perhaps, I can make this more clear if I give you instances: A tenant had a lease for his own life (Roe *v.* Cooney is the name of the case), he lived and he died in occupation of his holding, and the question at once arose whether he was in occupation of his holding "at the expiration" of his lease. I rather think the Court below held that he was not. It was not a Land Commission case, but I know that when it came to our Court the construction that prevailed was, that "at the expiration" of a man meant, at his last breath; and if at his last breath he was in occupation of his bed, it would follow that at the expiration of his lease he was in occupation of his holding; and, accordingly, having lived a lessee, he died a putative tenant from year to year, and his personal representatives and family got the tenancy and fixed a fair rent against the landlord. I presume the way in which it arose was, that the landlord tried to turn them out by ejectment; they pleaded that they were tenants from year to year; and tenants from year to year we held them to be.

3007. That is the case of Roe *v.* Cooney?—The case of Roe *v.* Cooney. There is another section further back, Section 15, on which the next development of that case arose: "If in the case of any holding the estate of the immediate landlord for the time being is determined during the continuance of any tenancy from year to year" (you will remember the words "at the expiration"; now we have to deal with the words "during the continuance"), "whether subject or not subject to statutory conditions, the next superior landlord for the time being shall, for the purposes of this Act, during the continuance of such tenancy, stand in the relation of immediate landlord to the tenant of the tenancy." A middleman held for a life; he sublet to an occupying tenant for the same life; the life died; the question was whether the estate of the middleman had determined "during the continuance of a tenancy from year to year." On a division, and a strong division, of opinion in the Court, it was held that the occupying sub-lessee was to be deemed under the 21st Section a tenant from year to year; that, being deemed a tenant from year to year, the estate of his immediate landlord had determined; then came the question: Had it determined "during the continuance of a tenancy from year to year"? The argument was strongly pressed that, in the ordinary use of language, if a man speaks of any event as happening — say a man dies "during the reign of the Queen," it is implied that the Queen's reign goes on longer than the man's life; but to have put that construction on this section would practically have deprived it of effect, because the only cases in which a tenancy from year to year continues after the dropping out of an intervening estate are cases in which the common law of landlord and tenant carries a tenancy from year to year up at once and attaches it to the head-interest, and we could not see that this would leave much for the Act to do. Accordingly we held (Seymour *v.* Quirke is the name of the case) that the occupying lessee was to be deemed tenant from year to year of the immediate landlord whose estate dropped out, and being deemed tenant from year to year to him, the determination occurred during the continuance of a putative tenancy from year to year, and therefore the occupier's tenancy was carried over and attached to the estate of the head landlord, and the head landlord became the direct landlord of the tenant from year to year who was originally put into the place by the middleman whose estate was gone. It is right to explain that the argument of hardship was met in this way: If the lessee had not sublet, he would have himself, being in occupation, been entitled to remain on as tenant from year to year, and the landlord would not have got back the land; therefore, we thought there was no particular reason why he should get the land back any more from the sub-lessees who were in actual occupation and who had been put in in the way I mentioned; that was the second stage of the case.

Mr. *T. M. Healy.*

3008. Was not Sir Edward Sullivan Chancellor in those days? He is dead?—I am not aware whether he heard the case; but I do not see what difference it makes that he is dead, or how it affects the question; I am sorry to say I have sat in that Court with seven Chancellors, of whom four are dead.

Chairman.

3009. There was the case of West *v.* Huggard?—Yes; the case of West *v.* Huggard is a very recent case, and is really a corollary of Seymour *v.* Quirke. In West *v.* Huggard, the middleman had let to tenants from year to year. I have told you that in the case of Seymour *v.* Quirke he had made a sub-lease, and we had deemed the sub-lessee to be tenant from year to year; in West *v.* Huggard they were actual tenants from year to year; it came up upon a case stated on the landlord's application before the present Lord Chancellor, myself, and Lord Justice Barry, on the 30th June 1892, and the question was whether the sub-tenancies from year to year created by the mesne tenant bound the head landlord; and we held that the sub-tenant was the real Simon Pure, and that he was entitled to the same rights as the sub-lessee had been entitled to in Seymour *v.* Quirke.

3010. There is this limitation to the principle of the 15th Section, that you must have an immediate landlord, a superior landlord, and an occupying tenant?—There have been a number of cases, both from the Land Commission and also from the Common Law Divisions, as to what is to be done where there is not an immediate landlord, but what is called in law an owner by title paramount. The cases I have mentioned are confined to the cases where you are able to find the three people mentioned in the 15th Section, and speaking for myself I do not see how the principle could be carried any further. The necessary parties to the transaction are, a head landlord, a middle landlord, and a sub-tenant occupying.

3011. Then, under the 21st Section the tenancy—the entire holding—must be under one contract, at a single rent?—That appears to have been made clear not only by the general definition of "holding," but by the fact that the tenancy from year to year which is imputed to every lessee is a tenancy subject to the rent and conditions of the lease.

3012. It is subject not only to statutory conditions, but also to the conditions of the lease?—It is subject to the conditions of the lease always, so far as they are applicable to tenancies from year to year. Many questions have arisen whether particular provisions were, or were not, applicable to tenancies from year to year.

3013. Just a question or two more about the Act of 1881. We have had before us these details of the proceedings under the Act of 1881 between parties?—It must be a landlord who has the originating notice served upon him, or who serves it. Either party can take the proceedings: and the third part of the Act enables a landlord and tenant, by agreement, to create, either what are called judicial tenancies, or fixed tenancies; both are only other forms of the same undeterminable tenancies from year to year that I have already mentioned.

3014. Now the Land Act of 1885; I do not think we need ask any questions upon that?—Except that it incorporates the definitions. Now we come to the Act of 1887, which is a very important Act.

3015. Tell us, in your own words, the scope of the Act of 1887?—The first section of the Act

Chairman—continued.

of 1887 continues the system of deeming people to be what they are not.

3016. The Act of 1887 continues the system of deeming people to be what they are not, you say?—Yes.

3017. How do you make that out?—I have already pointed out that the first condition of the leaseholder, under the Act of 1881, is that you are to deem him a tenant from year to year; but this Act of 1887 goes further, and requires you to find out what he would be deemed to be at a time future. "At any time within two years" (and that has been extended) "after the passing of this Act, on the application in the prescribed manner to the Court by the lessee of any holding who, at the expiration of his lease existing at the passing of the Land Law (Ireland) Act, 1881, would be deemed to be a tenant of a present ordinary tenancy from year to year within the meaning of the said Act, at the rent and subject to the conditions of the lease" (that is enacted again), "or would be so deemed but for the fact that such lease would not expire within 60 years after the passing of the Land Law (Ireland) Act, 1881, such lessee shall, if *bonâ fide* in occupation of his holding, be deemed to be a tenant of a present tenancy in like manner and subject to like conditions, and subject to the same right of resumption as if his lease had expired." That requires you to see what would be the state of affairs if the lease had expired, and I may say, generally, that many questions, as you will easily anticipate, have arisen on the section; but the general principle is, that it enables the tenant, if he chooses, to apply to wipe out the time during which his lease would have run, and to apply as if the lease had expired, to ante date the time at which the rights which would ultimately come to him under the Act of 1881, Section 21, are to be reduced into possession; but the rights are identical. He is only to get the same rights and to be in the same position as if his lease had expired; and it is only open to a man to come in under this section who, as far as the circumstances at the time permit, would be, at the end of his lease, entitled to come in. As an instance of the difficulty that this has brought about, we had one case in which the lease was for 99 years, provided that a named person so long lived. According to all legal principles, that was a lease for 99 years, and, therefore, would not expire within 60 years; but we held that expiring meant capable of expiring, or likely to expire. I mention that as an instance of the sort of question that arises on this form of legislation. Then the same Act deals in the 4th Section with a previous provision of the Act of 1881; and now, perhaps, this would be a convenient time to explain to you the provision as to subletting which has caused some difficulty.

3018. Which section of the Act of 1881 is it that deals with that?—The 57th Section of the Act of 1881.

3019. This is about the active consent?—Yes. In a paragraph not numbered, occurring in the middle of the definitions, you find this clause: "Where the tenant sublets part of his holding with the consent of his landlord, he shall, notwithstanding

Chairman—continued.

withstanding such subletting, be deemed for the purposes of this Act to be still in occupation of the holding." To apply that section it must be a case in which the tenant has sublet, and it must be a case in which he has sublet with the consent of his landlord. Well, most leases contain some provision about subletting, either prohibiting it except with written consent or putting conditions upon it, but many leases contain no such provision, and then it is open to the tenant to sublet if he likes, that is to say, the law does not prevent him, but this Act requires that the subletting shall be with the consent of his landlord. A number of cases arose as to whether there was any evidence that the landlord had consented, and in cases where the landlord had no power to do anything, and where he did nothing, it was substantially held, that he had not, by doing nothing, consented to a thing to which he could neither give nor withhold his consent. On the other hand, where there were provisions prohibiting subletting, and the landlord had stood by, not merely acquiescing, but knowledge was brought home to him by his dealing with the sub-tenant, or recognising him; in those cases the subletting was held to be a subletting with his consent. You will observe that it applies to all sublettings with consent; and it certainly may have important effects, not perhaps in accordance with the general principle of the Act; in the case where a middleman has a lease of a large tract of country,—formerly, in Ireland, much more common than it is now, but existing in some cases still,—say a lease of a piece of land of which half or more is in the possession of sub-tenants, the rest in the middleman's own occupation. If the landlord has consented to these sublettings, then the only course open under the Land Act is to fix a fair rent on the entire holding; you cannot divide it; you cannot apportion the rent; you cannot transfer the sub-tenants to the head landlord; you have to fix on the middleman, and on him only, one fair rent for the entire holding; even where half, or less, is in his own occupation, and the rest is in the occupation of under tenants. In other words, you perpetuate the statutory middleman in an Act passed for the benefit of occupying tenants. The fair rent is to be fixed as an occupation rent, and the result, of course, is, that in a case such as I have put, the middleman has part of the land in his own occupation, and the whole reduction of rent is thrown upon him, if his sub-tenants apply, as they are entitled to apply, to fix fair rents against him; because he is obliged to keep his own land, unless under another section, Act of 1887, Section 8, the middleman is empowered to surrender. He may give it up altogether. As I read it, he must give up what is in his own occupation, and he cannot even do that unless he can satisfy the Land Commission that he would be at a loss by keeping it. That is the Act of 1887, the 8th Section.

3020. Now we come to the 4th Section of the Act of 1887?—The 4th Section of the Act of 1887 purported to amend the Act of 1881, Section 57, and a great many questions have turned up on the amending Act: "A tenant shall, for the purpose of the Land Law (Ireland) Act, 1881, and of this Act, be deemed to be in *bonâ fide* occupation of his holding" (those words haunt you throughout) "notwithstanding that he has sublet part thereof, provided the subletting is for the use of a labourer or labourers *bonâ fide* employed and required for the cultivation of the holding, and the Court deems such subletting reasonable, and sanctions the same. The land comprised in each subletting shall not exceed half an acre in extent, and the Court shall have regard to the size and character of the holding, and may prescribe such terms as to rent and otherwise with regard to the part sublet as it thinks fit." That is the first paragraph. The second paragraph is: "A tenant may also be deemed in occupation of his holding, notwithstanding that part is sublet, where the subletting is of a trivial character, and the Court deems the tenant to be substantially in occupation of the holding." I have not had an opportunity of reading the evidence, but I have seen a statement that there is no guide to the interpretation of this section except the decisions of the Court of Appeal, and that those decisions have not been consistent. I will now pass on, only saying that we have had two cases already on that section, one on the first paragraph, the other on the second, and in both cases we have held the subletting to be trivial, and in both cases we in that respect differed from the Land Commission, and in each case we restored, as well as I remember, the judgment of the Sub-Commission; but a principle is involved in each of those decisions, and when we come to them I will take the liberty of giving them to you.

3021. The 8th Section of the Act of 1887 made some alteration, did not it?—I have mentioned it already. That gives the middleman power to retire if he loses by his staying.

3022. Yes; I beg your pardon, that is so. Now the Act of 1888?—One moment, the 8th Section, Sub-section 2, of the Act of 1887, makes it clear that a middleman cannot keep any bit of land he has himself; he must surrender the whole thing; and the reduction of the rent of the middleman's tenants not only wipes out the middleman's interest, but may leave him incapable of keeping what he has himself. He must go altogether, there is no power to apportion, no power to divide, and no power to make him a tenant of what he has.

Mr. *T. M. Healy.*

3023. That is Judge Gibson's fault if it is so, is it not?—I do not know; I have nothing to do with that.

3024. We fought it in the House?—I say, once for all, with regard to this subletting, I do not think it is possible to work the machinery of this Act, except as between occupying tenants and immediate landlords, and therefore any palliatives about subletting which will continue middlemen will always lead to further difficulty. It is not for me to suggest how those difficulties may be removed, but I am pointing out the effect of the Act.

Chairman.

3025. You return now to the subletting?—I will give you the cases; if so desired, I can give them now.

3026. Now will you come to the Act of 1888?—No; in the Act of 1887 there is another section; a very important one; Section 9, on town parks.

Mr. *T. W. Russell.*

3027. What is the section?—It is the 9th section. Again, I must, in order to make this intelligible, refer back to the one that it amends.

3028. What section of the Act is it?—Section 58, Sub-section 2, of the Act of 1881. You have seen already that town parks figure largely in my list, but nearly every word of this definition has given rise to questions. "Any holding ordinarily termed 'town parks' adjoining or near to any city or town which bears an increased value as accommodation land, over and above the ordinary letting value of land occupied as a farm, and is in the occupation of a person living in such city or town or the suburbs thereof." I shall have to come back to the cases, I am afraid.

3029. It is one of the vexed questions?—It has vexed us quite as much as anybody else. I want first to show you the effect of the amendment, if I may; what the amendment was, and how it gave rise to more questions; it is the 9th section of the Act of 1887, and it purports to amend what I have read: "A holding shall not be deemed to constitute a town park, though within the definition of the expression 'town park' in Section 58 of the Land Law (Ireland) Act, 1881, if it is let and used as an ordinary agricultural farm, and may, in the opinion of the court, be included in the operation of the last-mentioned Act without substantially interfering with the improvement or development of the city or town to which it belongs or the accommodation of the inhabitants thereof." I do not know whether the Committee understand fully that a town park (in the natural sense) of the most decisive kind is within the Act, and a rent must be fixed upon it, and a statutory tenancy must be created in it, if the tenant of it lives outside the town or suburbs.

Chairman.

3030. If he is not resident in the town?—Yes; one of the conditions of being a statutory town park (by which I mean an excluded town park) is that the tenant shall live in the town or suburbs. I can give you as an instance the case of the Roman Catholic Bishop of Clogher, Dr. Donnelly, who had an admitted town park.

Mr. *T. M. Healy.*

3031. Admitted in the instrument?—Admitted in the argument. When I say "admitted town park," I ought to make myself quite clear. I am not using the term "town park" in the sense of statutory town park, because then the difficulty would not arise at all. I mean by "town park" a piece of land bearing additional value as accommodation land (these are all questions of fact usually settled by a sub-commission) of the character ordinarily

Mr. *T. M. Healy*—continued.

termed town parks; but in the case that appeared before us, at all events, it was assumed, for it did not come from the Land Commission, that the particular piece of land had that character. Well, the Bishop's residence was found to be, and was in fact, not in the suburbs of the town (the town is a very small one—Monaghan); therefore the rent was to be fixed, if there was a tenancy. Another question arose in that case which I need not trouble you about. Similarly, in Dundalk, a solicitor who had his office outside the town had a piece of land that certainly was a town park, in the natural sense, because it was actually adjoining the municipal boundary of the borough, and it was admitted to bear increased accommodation value. The whole question whether the rent was to be fixed or not depended on whether he lived in the suburbs; no matter how the development of the town or the accommodation of the inhabitants might be affected by making these things town parks, if the tenant did not live in the town or in the suburbs the rent should be fixed.

3032. You excluded the solicitor I take it?—We did; because we held that his residence was in the suburbs. He used to walk in every morning to his business, and it was not a great distance. I do not wish to go now into the cases, though I have them here. I am only showing the particular questions, and how the Acts relate to each other. The first point on the Act of 1887, Section 9, is on the words: "Let and used as an ordinary agricultural farm"; you will observe "as an ordinary agricultural farm" appears to be contrasted with "land occupied as a farm," not saying "agricultural"; and further that the original Act contrasts agricultural and pastoral holdings; therefore this amending section introduces a special condition and an additional word that never were in before, namely, "ordinary agricultural farm." I have several cases which it will be important the Committee should see, perhaps, as to whether particular users have or have not been agricultural users; and we have even had the question argued whether we were to put the emphasis on the word "agricultural," because we had statutes to deal with in which "agricultural" is contrasted with "pastoral," and in which "ordinary farm" is contrasted with "ordinary agricultural farm," in clauses dealing with the same subject, and each purporting to amend the other. I mention that as an instance of the violation of the Lincoln's Inn rule, the conveyancing rule.

Mr. *T. W. Russell.*

3033. It may be interesting for the Lord Justice to know that this amending clause in the Act of 1887 was not the work of the House of Commons, but the work of Lord Macnaghten in the House of Lords?—I cannot attach any importance to that; we have to interpret it as it is before us. Coming down from such a high authority, if I were at liberty to do it, which I am not, I should come to the conclusion that he did not use the word "agricultural" without intending to put in an additional condition, which was what we held it did.

3034. You

Chairman.

3034. You have nothing to tell us, I think, about the Act of 1891?—I do not think I need trouble you more about the Act of 1887; the two sections I have referred to, amending the previous definitions, have each of them led to different questions, and account to a large extent for the increased appeals from the Land Commission subsequent to 1887. Perhaps I might say once for all, lest I should be supposed to imply that these were excessive in number, that having regard to the enormous number of cases that the Land Commission has disposed of, I think the number of appeals has been small rather than large; in some years there have been only 12 or 14, and the largest number in any one year has been 39; therefore when I say "increased appeals," I do not intend to convey anything excessive.

3035. We understand that?—Allow me to say this; in the whole course of these Land Appeals I do not remember a single case of what I should call a frivolous appeal, or one that was not fairly arguable. There have been a good many in which we did not hear the other side; we have thought they were plain cases, but if the parties thought they were not plain cases, they had the right to appeal.

3036. There have not been a larger proportion of appeals in land cases than on other questions?—Certainly not; nor I would say, either, any larger proportion of differences in the Court of Appeal with the Court below, nor any larger proportion of differences of opinion among ourselves. I have been in a minority myself three or four times, I should think, out of the number; and I suppose others have exercised the same privilege; but the differences of opinion have not been larger in these than in other cases.

3037. I think there we may leave this very important branch of the inquiry, namely your views and explanation of the Acts?—There are two or three more points, perhaps, you will permit me to refer to. There is the Act of 1888, which is a very important one, about informal assignments, and it repeats that it and the Acts of 1887 and 1889 are to be incorporated together. The Act of 1891 perpetuates the Land Commission; it incorporates eight Land Purchase Acts. You will find that the Rent Redemption Act of 1891 incorporates the Land Acts of 1881 and 1887, and the Land Purchase Acts, and Section 3 enacts that they are all to be read and construed together.

3038. That is all you have to tell us of the number of Acts which have to be read one in with the other; and you have illustrated some of the difficulties that arise in the construction and interpretation of these Acts?—The effect of these incorporations is always to increase the difficulty of legal interpretation. In the first place, you have to refer to more documents than one; but that is only a very small part of it; the great difficulty is the qualifying expression about inconsistency, variance, and alteration. When you have to read two documents dealing with the same subject in a complicated way, it is very difficult to know when they are inconsistent and when they are not. The effect is what I have mentioned already. Every term, wherever you come across it, must have the same artificial meaning; and every clause, wherever you find it, is to be read as if it were in the Act that you happen at the time to be reading, if it occurs in any one of the Acts that is included in this great number; I did not count them, but I think there are about 14 altogether. They constitute the Code.

Chairman—continued.

3039. Now we will turn to your chart or list of the various heads, some 15 or 18 in number, under which appeals came before your Court. We have had evidence as to some of these points raised, but we should like to hear with your authority your view of some of them?—May I ask which is the first of them?

3040. Perhaps it would be most convenient if you reserved to the last the greatest of all, the case of Adams *v.* Dunseath?—Very well, sir.

3041. We will, please, first go through your own list in your own way; "agricultural or pastoral," that is the first of your subjects of appeal?—It is the first in order in the statute.

3042. It is the first of the exceptions under the 58th Section?—Section 58, Sub-section 1, enacts that the Act "shall not apply" (that is to say there is no jurisdiction) "to tenancies" (you have seen what "tenancy" was, as I have already mentioned) "in any holding which is not agricultural or pastoral" (it must be either agricultural or pastoral) "in its character." The principle, as we understand it, is that the burden lies on the tenant in the case of this exception; it being negative, he is obliged to show, in the first instance, as the foundation of the Land Commission's jurisdiction, that his holding is a holding agricultural or pastoral in its character.

3043. The other exceptions apply affirmatively?—They are affirmative, and in other words the tenant first brings himself into the large class of agricultural or pastoral holdings, and when he has done so the landlord must take him out again if he wants to show that he has demesne land, town parks, or anything of that sort. The Court must be satisfied in the first instance of its own jurisdiction by ascertaining that it is a holding "agricultural or pastoral in its character."

3044. What is the point upon residential holdings?—That is one class of non-agricultural holdings; these residential holding cases have come nearer to the line at opposite sides than any other class.

3045. Nearer to what line?—The "line-ball" case, if I may call it so, has been more nearly approached in the residential cases than in any other.

Mr. *T. W. Russell.*

3046. There are very few of them?—They are very important though, and there are a good many of them; they are all large cases.

Chairman.

3047. There are 17 in your list?—Besides those 17, there are a number of cases from the Common Law Divisions, amongst others, Doyne *v.* Campbell, and Carr *v.* Nunn; those are decisions on ejectment brought by the landlord to determine his right of possession of the holding

Chairman—continued.

as being not agricultural or pastoral in its character. The point is this: The Act seems to assume that each holding has a homogeneous character of some kind, and if a man takes a place, not for the purpose of agriculture or pasture, but for the purpose of a residence for his own enjoyment, and if the soil, as a productive agent, is not the thing that gives a character to what he is taking, but if it is a house that he wants for himself, a handsome place, and so forth, then it is not agricultural or pastoral in its character. The first case of Carr *v.* Nunn was a small holding of a few acres, but with a good house upon it; the next, the case of Doyne *v.* Campbell, refers to a place that I happen to know myself, the Hermitage, Rathfarnham, near Dublin. There were some 25 acres of land, of which 10 acres were under a villa residence, offices, gardens, and ornamental grounds. The house is a fine one that used to be let at 180*l.* or 200*l.* a year, for the summer time alone; the remaining 15 acres consisted of two or three pasture fields; and in that case it was held that the character of the holding was residential and not agricultural or pastoral. That is one class of cases. Then there is a second class where the holding consists of two parts, and where one part is not agricultural or pastoral, and the other is. There the question arises in this shape: Can you attribute to the whole thing any one character, and if you can, is that the agricultural or pastoral character? If you can do that, notwithstanding that part of it, if it were by itself, would not be agricultural or pastoral, the character of the whole keeps it within the Act; but if there is any substantial part of it that is plainly not agricultural and not pastoral, and that cannot be deprived of its character, there it has been held that you cannot attribute to the whole the character that the Act requires. One of the most important cases upon that point was the case of a mill, a large mill with special provisions.

Mr. *T. W. Russell.*

3048. Are you now referring to mill-holdings?—I was giving one as an instance; I have them all here.

3049. Mill-holdings are a very important class; are you now going to deal with them separately?—I will divide them in any way you like.

Chairman.

3050. You have dealt with the residential holdings?—I will go on with the residential.

3051. Now will you be kind enough to deal with mill-holdings?—In the residential holding cases you understand that it is admitted there is only one character in the holding; shall I give you a particular case?

3052. Yes, if you like?—The first case I take is a case of 11½ acres and a house at Malahide; I will give you only the leading ones; giving a case decided each way.

Mr. *T. M. Healy.*

3053. Will you give the name of the case, please?—Shaw *v.* Cave; a house and 11½ acres at Malahide; the rent was 62*l.* 15*s.*; and the

Mr. *T. M. Healy*—continued.

amount of the rent led us to believe that the tenant was paying the rent for his house and not for his land; he had taken a little place to live in, and we had to consider also, of course, the locality. In every one of these cases every circumstance has to be taken into account. Now, here is a case, on the other hand, in which the holding was held to be agricultural,—the case of Flynn *v.* Carew, about the same size; 10 acres and 3 roods; the rent was 24*l.* 3*s.* There was a house on it, and there was a covenant by the tenant to repair the house and to spend a hundred pounds on it. It was contended that that showed that the house was the main thing, but having regard to the fact of nearly 11 acres, and that the rent was only 24*l.* 3*s.*, we concluded that the character was agricultural or pastoral, and that it was within the Act. Now the next case was the case of Lepper *v.* Pooler. There the place had been taken by Mr. Lepper, a gentleman engaged in mercantile pursuits in Belfast; he had, I think, some 20 acres of land; I have not a note of the figures, but he went in and out to his business every day, from this place; his real business was that of a tea merchant. We held that that was residential and that it was not agricultural or pastoral in its character, and that it was not within the Act. Then again, on the other hand, there is a case in which there was almost a difference of opinion, and on which, since, my Brother Lord Justice Barry has stated that he thinks he was wrong in agreeing with Lord Ashbourne and me, the case of Waldron *v.* De Vesci: a solicitor took a house a quarter of a mile (I think it was) outside the town of Abbeyleix, 71 acres of land, rent 72*l.*; the valuation on the buildings was 20*l.*, and on the land 48*l.*, making a total of 68*l.*; it was a quarter of a mile from Abbeyleix; the solicitor had his office in the house, and Lord Ashbourne and I both came to the conclusion and held (and Lord Justice Barry did not differ with us then, though he did afterwards say he thought he was wrong) that 71 acres of land taken at the rent of 72*l.* could not be deprived of its agricultural character as the substantial matter of the contract between landlord and tenant, by the fact that the house was used by the solicitor as his residence and office. I mention these two cases only to show that the question in each case is a question of pure fact, to be determined in every case on a consideration of all the circumstances, acreage, rent, the calling of the tenant, and the way he uses the place; we can reject nothing.

3054. There is no legal entanglement of any kind on a residential holding, is there?—I do not know whether you can say there is no legal entanglement.

3055. I put that to you?—I think there is; I think no legal entanglement more embarrassing than one which obliges judges to introduce into Acts of Parliament what is not to be found in them in so many words. This word "residential" (a barbarous word, to my mind) is not in the Act. This class of cases are held not to be agricultural or pastoral, and it would occur to me that it is a legal entanglement, that this exception to the Act rests entirely upon a negative, or rather upon the exclusion of a negative.

3056. In

Mr. *M'Cartan.*

3056. In the case of Lepper *v.* Pooler, I observe the area is 21 acres, and the holding is described in the case as that "farm, tenement, or parcel of land, &c.," without any mention being made of the house?—That was, as well as I remember, a fact; and one of the facts most strongly relied upon for the tenant, of course; but I think the house had been built by Mr. Lepper. We had photographs even, in this case, of the house: the instrument was always taken into consideration; but the question still remained, what was the character of what was let, and although it was called a farm, that did not conclude the matter. You constantly find, for example, even in towns, places let under the name of portions of land. I cannot give the history of it; I have only my own note: but the whole history of the case, the position of the gentleman, and the mode of user, were all taken into account, and without saying whether we were right or wrong, these are the findings, in fact, and they rest upon the evidence in the particular case.

3057. I suppose there would be no doubt that the house had land attached, would there?—The difficulty would remain just the same. We have no right to put a man in or out by reading the lease only.

Mr. *T. W. Russell.*

3058. You must take all the circumstances?—We must take all the circumstances into account; and I am coming to a case in a moment, in which the Court was divided half and half, to show you how impossible it is to define things strictly. There were several other things in cases which I need not trouble to read. The amount of land in some cases was large, and the rent was to be accounted for by the land without the house. In all these cases the holding was held to be agricultural or pastoral in character.

Chairman.

3059. Do not burden yourself with too many cases; we have a great deal of ground to go over?—There is one I ought to give you, because the Court was divided. It is the case of Hunt *v.* Ryan. Then I must give a case Mr. Russell referred to, because it raised another point, and a very important one. In Hunt *v.* Ryan the holding was 2¼ miles from Clonmel; the rent was 135*l.*; the valuation was 68*l.*, of which 11*l.* was on buildings, and 57*l.* on land. There were 30 Irish acres and a house, and in some old document (I did not exactly note what it was) it had been called the "demesne lands of Cottage," but it was demised as 30 acres with the house or cottage. The Sub-Commission who saw the place dismissed it as "residential"; they held that it was of a residential character to look at. They were reversed.

3060. They were reversed by the Land Commission?—By the Land Commission. I have told you already the decisions of the Sub-Commissions do not come direct to us at all; and the Land Commission fixed the rent. The appeal was heard by the Lord Chancellor, the Chief Justice, Lord Justice Barry, and myself; and among other things that I think affected the decision to some extent, the tenant produced a photograph of the place which was really only a photograph of the back of an outhouse; it was produced for the tenant, and it certainly did prejudice some members of the Court at all events against him.

Chairman—continued.

Mr. *T. M. Healy.*

3061. Whom do you think it would prejudice?—I am only telling you what happened. We were all agreed as to what the question was. The question was whether the most appropriate use of the place as a whole was as a residence, or as an agricultural holding, and of the opinion that it was agricultural, were the Lord Chancellor and myself; of the opinion that it was a residence were the Chief Justice and Lord Justice Barry, and the Court being equally divided, and the parties not applying to have the thing further argued, the tenant, I presume, has got his statutory tenancy

Chairman.

3062. He has got his rent?—Yes.

3063. That is to say, the Land Commission decision remains?—When the Court of Appeal is equally divided the decision of the Court below stands. I mention that to show you how very close to the line cases of this kind come. The Sub-Commission was of one opinion, the Land Commission was of another opinion, and the Court of Appeal was divided half and half; the only instance in which we were ever so divided in a Land Case. I might mention one other case, because it was very like Waldron *v.* De Vesci, but it fell on the other side of the line—the case of Stott *v.* Cramsie—in which a solicitor was advised medically that he should live in the country; he took a place in the country, and went to reside there, and it was held to be residential in its character. Now, I come to Moonan *v.* Conyngham, the last case on this point, which is very important.

Mr. *Sexton.*

3064. You say the Court were equally divided; was that the only case of the 202 in which that Court was equally divided?—The only one. I can hardly call to mind any case in which we were divided even three and two; but Hunt *v.* Ryan was the only case in which the court of four was divided equally. We have had two and one frequently; and, of course, the majority govern. Now, in this last case Lord Conyngham was the landlord, Moonan was the tenant. The holding was 86 acres, 3 roods, 30 perches; the rent 107*l.*, the valuation 129*l.*; 30*l.* on building, 99*l.* on land. It joined Lord Conyngham's demesne at Slane, but it was admitted by counsel that it was not let wholly or mainly for the purpose of pasture, and that it was not demesne land. I say that because there were a good many elements in the case that might have been considered on these questions, but they were not raised before us at all. It was leased in 1849, by a lease that dated back to 1845, as "that part of the lands of Slane called Castle Park, with the dwelling house and buildings thereon." There

Mr. *Sexton*—continued.

were no covenants for insurance, and there was a covenant not to build any other house on the place without the landlord's consent. There was a good house and large offices, which would now cost some 2,000*l.* These had been enlarged by the tenant between 1845 and the time he actually got his lease.

Chairman.

3065. One thousand eight hundred and forty-nine?—One thousand eight hundred and forty-nine. The lessee was the agent of the landlord, or, if not his agent, a relative of the agent; he had put up these buildings apparently (I think there can be no doubt about it), under an agreement. The lease dated back to 1845; it was for three lives, and in 1891 only one of those lives was in being, and he was then aged 62. The lessee put the place up for sale, and the whole difficulty arose from the way he described it. Posters, and advertisements in the newspapers, and on the public walls, all described it as a charming residence, with a hundred acres of the finest land in Meath attached; but he added a note: "On the expiration of the lease the tenant will be entitled to fix a fair rent." Moonan bought it at the auction for 1,660*l.* Of course, if it were a residential holding not within the Act, he got whatever chance there was of the surviving life; but the advertisement said nothing about how old the life was; no inquiry appeared to be directed by anybody to that circumstance, and I am not sure, if Moonan had not had another circumstance in the case, that he might not have found it hard to hold his tenancy; but the landlord's solicitor attended at the sale, and he had a conversation with the auctioneer before the place was put up, telling the auctioneer that it was not Lord Conyngham's view that a fair rent could be fixed; but he used the expression that he did not wish to "spoil the sale"; he said nothing, but he remained in the place, and he proved that he was directed to watch the proceedings, and also that he was prepared to buy the place himself for 1,200*l.* for the landlord. Well, I confess, speaking for myself, and I only do speak for myself, that I did not see my way to hold that 86 acres of land at a rent of 107*l.* 7*s.*, indicated anything except agricultural or pastoral character. I have always tried to insist that there is nothing in the Act to keep out people who live in good houses; I have often expressed regret that the houses were not better; but I think there was a great deal to say in the case to the effect that the house was much too good for the 86 acres. £. 2,000 it would have cost, but the upshot of the case was that the Land Commission (and, I think the Sub-Commission too) dismissed the case as "residential"; and we held that we could not dismiss it; we laying down the principle that the quantity of land, and the rent, and all the rest going together, showed that it was agricultural in its character; but several members of the Court insisted also, largely, on the conduct of the landlord as affecting the result. That is the last of these residential holdings, and I think I have given you specimens of nearly every class of them.

Mr. *T. M. Healy.*

3066. Would you give us Wall *v.* Eyre, the Freshford toll case?—That is not residential. I will give you that in time.

3067. You have passed away from the excluded holdings, have you not?—No, there is another similar class. I want to make quite clear what I am at. The residential holding cases are all cases in which it is conceded that the holding, as a whole, has one character. The question is whether that character is agricultural or pastoral, or is residential; but none of these are cases complicated with the distinct question of two characters of which one was agricultural and the other was not. Wall *v.* Eyre came under that class.

Chairman.

3068. In all these cases they were homogeneous, whatever the homogeneity might amount to?—They were homogeneous; the question was what was the genus.

3069. Now as to mill holdings, we have had one or two cases of that kind?—All these cases come under a different class. They are cases where in the one holding (and I hope I have made it clear that you must get one holding as the bottom of the whole proceeding) you have two different parts.

3070. We are now on a point where the holding may have a double character imparted to it by a mill being put upon it?—Before I come to that I wish to refer to two more "homogeneous" cases. The first is Brooke *v.* West. It is a case on which a good deal has been said, and not always complimentary. It is called the "Strawberry beds" case.

Mr. *T. W. Russell.*

3071. Is that the case of the Strawberry beds on the Liffey?—Yes. I do not say that it has been done here, but it has been sometimes more or less represented that the Court of Appeal decided that a bed of strawberries was an agricultural holding; and certain cabbage garden cases may or may not have been decided by the Land Commission upon that principle. I do not know whether they were or not; they never came to us; but the case of Brooke *v.* West is an interesting one. There are about three miles of the Liffey which have one side of it beautifully held up to the sun; the land is well tilled and the early vegetables and the strawberries come to Dublin from that part of the world, and the whole place is called the "Strawberry beds," and this was really called the "Strawberry beds case," because the holding was in that district; and I rather think the name led to the belief that the holding was a bed of strawberries. The holding consisted of 7½ acres of land. The man grew strawberries as a crop; he also grew oats and potatoes and early vegetables, and he tilled his little bit of land, and he lived on it. They came up to us on an appeal by the landlord contending that it was not an agricultural holding. We held that the cultivation of strawberries might be worthy of the name of "agriculture," and particularly in a case where they were only part of the crop, and where the holding was 7½ acres; and we certainly did

Mr. *T. W. Russell*—continued.

did say, although the case did not call for it, that a man might have an agricultural farm, a strawberry farm, a hop farm, or any other sort of farm, and that if it were but big enough, and agricultural in its character, he was entitled to fix his rent, and that was the decision in Brooke *v.* West. But that was followed by some decisions (not of our court) in which market gardens in the neighbourhood of Limerick were held to be agricultural or pastoral. I do not suggest for a moment that the decisions were wrong; I do not wish to do so for an instant; but Brooke *v.* West was decided so long ago as 1883, and the question never turned up again with us until this year, when we had a very interesting case, in which, I think, another class, or sub-class, may have been involved. It was a case of Perry *v.* Farley, on the 30th of April of this year. The holding was one acre on the Circular-road in Dublin, within the municipal boundary, and entirely occupied as a market garden by the tenant, who had also other quantities of land, and whose business in life was that of a market gardener. He lived at Crumlin, which is a mile outside Dublin. There was a question whether he lived in the suburbs, and there was also a question whether this holding had additional value as accommodation land; but we did not decide against him on that ground at all; it appeared that the history of the holding was that he had originally had this and an adjoining acre under different landlords; the adjoining one had been taken up from him, and had been turned into a dust heap. The frontage was on the Circular-road, which many Members of the Committee know; and I may mention the position of it. It was exactly opposite the building that the Little Sisters of the Poor have put up on the way to Kilmainham.

Chairman.

3072. It is not the North Circular-road, is it?—It is the South Circular-road, on the way to the Phœnix Park. Well, that Circular-road to which this plot fronted was paved (there was a footpath to it) and lighted, and taxed, as part of the city of Dublin. It was inside the city; at least, inside the municipal boundary. The landlord (not Farley, but his predecessor in title) advertised the place to be sold as building ground. In this respect it was something the converse of Moonan *v.* Conyngham. At the same time that he offered it for sale as building ground the tenant served an originating notice to fix a fair rent on the 4th April 1892. The auction took place in May 1892, and Farley, the landlord who came before us, bought the place for 260*l.* for the purpose of building a villa upon it. Of course he had to meet the fact that there was a man in possession who claimed to be an agricultural tenant and Perry's (the tenant's) notice come on. The plot was certainly agricultural, but the question was: Was it agricultural in character? and having regard to its position, and to all the facts, we came to the conclusion that the real character of that plot of ground was that of an urban holding; and we excluded the tenant from the Act. We all agreed about it. The Land Commission had fixed a fair rent. It was heard

Chairman—continued.

by the Chief Baron, Lord Justice Barry, and myself. You will observe that town parks adjoining, or near to, any city or town are mentioned in the definition. We rather took that as an implication that anything that was in a city or town was out of the Act.

3073. *A fortiori*?—"Adjoining or near to" does not say "in."

Mr. *Leese.*

3074. It would not be "near"?—No; that was the decision, right or wrong; I do not argue these cases: I am telling you what the facts were. That was held to be an urban holding, and we held that the landlord who had purchased it when it had been advertised as building ground would be entitled to determine the tenant's interest and take it up, as the dust heap had been taken up some years before.

Mr. *T. M. Healy.*

3075. Under what section of the Act was that excluded?—We held that it was not agricultural or pastoral in its character; that the character was not finally fixed upon it by the fact that cabbages were grown upon it; particularly (we have to be men of the world), having regard to the fact that all of us had seen vegetables grown in places in Dublin which are now occupied by houses (and I mentioned this in my judgment). I remember them, for instance, in Upper Gardiner-street, and even about Fitzwilliam-place, and places of that sort. I mention that as another instance of the difficulty of dealing with a negative exception. Now we come to the cases where there was a real distinction between one part of the holding and another. The first of those in my order of time was the case of Mooney *v.* Wilcox, where there was a provision that the landlord might take up any four acres of the holding for the purpose of building; but it was agricultural land near Palmerstown, and there was a good deal of it. The Land Commission had held that this provision prevented the rent from being fixed; but we held the contrary. It had not been exercised. If the landlord had taken up the four acres there would have been no difficulty; he had not done it, and there was no prospect of his doing it at the time, and the condition which enabled him to do it would come into operation possibly after the fair rent was fixed. We held that that was a case in which the tenant had a holding agricultural or pastoral in character. There are a number of other cases; I am not giving you any except those that I think typical. There is the case of Wherry *v.* Annesley, a holding at Newcastle.

Mr. *T. W. Russell.*

3076. County Down?—County Down. That was a case in which the Land Commission reversed the Sub-Commission, and we restored the Sub-Commission. The Sub-Commission put the tenant in, the Land Commission put him out, and we put him back again. There were 4 acres and 14 perches of land, and a detached plot in Newcastle, with a covenant to build one house upon it, and one house only. The lease was made a long time ago; the date was 1809; and we

Mr. *T. W. Russell*—continued.

came to the conclusion that it really was at that time a case in which it was intended that the man who had the bit of land should farm it and live on the other little plot and have it as a site for his house. We held that it was agricultural; that the piece separated from the house was only an adjunct to the main holding, and that it was agricultural in its character, and we reversed the decision and remitted it to the Land Commission to fix the rent. There was another case, but all the decisions agreed upon it, just outside Bushmills.

Chairman.

3077. Antrim?—Yes, Taggart *v.* M'Naghten. The tenant was a shopkeeper in the town who sold gunpowder, and on this little holding outside the town he put up a magazine to store his gunpowder under the Explosives Act, and the landlord contended that it was not agricultural in character. But we overruled that; the magazine was a small one, and the field was a big one; and the Land Commission had done the same. Those are all cases where the character was held "agricultural." Now the first important non-agricultural case was the case of Johnston *v.* Bradley, where the holding consisted of a piece of land, certainly sufficient in itself to constitute an agricultural holding, but it also included six houses in Strabane, and we held that the six houses in Strabane not being agricultural or pastoral, there being no power to divide or apportion, there was an appreciable, substantial, separable part of the holding not within the Act. We had to find one homogeneous character; and we could not find one all within the Act, and we were obliged to leave all out. The next case is a mill case, Boyle *v.* Foster. In this case of Boyle *v.* Foster, there was a piece of land and a mill, and there were a number of provisions in the lease about mill races and mill powers. It was held under lease; the rent was 260*l.* The Sub-Commission fixed the rent (which was affirmed by the Land Commission) at 156*l.* There was a covenant in the lease to insure the mill, and there was a provision in the lease that if the mill was burnt the rent payable under the lease was to be reducible by 80*l.* a year until the mill was restored again. The lease therefore showed that 80*l.* out of the 260*l.* was mill rent, and that 180*l.* was referable to the land.

Mr. *T. M. Healy.*

3078. Have you the acreage?—I have not taken it down. I could find it for you, but it is not in my note.

3079. It is not in Cherry either, is it?—My recollection is that the place was a biggish place, 70 acres or 80 acres, or something like that. Now note what the application of the Act came to. The Sub-Commission in the pink paper put 40*l.* on the mill (of course mill holdings in Ireland have become in many cases less valuable) and 116*l.* on the land: and that was the way they made up the 156*l.* It was plain under one of the other sections that the conditions of the lease, which were just as applicable to a tenancy from year to year as they were to

Mr. *T. M. Healy*—continued.

a leasehold, would still apply; and if the mill was burnt the 80*l.* reduction would come in, and half of that would fall on the land rent, and the land rent would thus be reduced to 76*l.*, until the mill was built again. We held that it was impossible to apply the provisions of the Land Act to a case where a large, substantial, part of the subject-matter of the tenancy and holding was of that character, non-agricultural, involving special consequences, and inconsistent with the fairness of the rent as the result of dealing with it. That was the largest of the mill cases, but there have been some others.

Mr. *T. W. Russell.*

3080. Let me ask you a question about that. We all know that the milling industry in Ireland has suffered very much during the last dozen years. I, personally, have no difficulty in a case where a mill is actually in work; I can see the full force of excluding that; the point I wish to know is this: Take a holding where the mill has absolutely ceased working, where there is no probability of its ever beginning work again, where it is going to ruin; is it the case (I only ask for my own information) that a holding with such a condition forced upon it is excluded from the Act of 1881?—I cannot answer as to whether it is excluded or not. I can only tell you that it has not been excluded in the Court of Appeal.

Mr. *T. M. Healy.*

3081. Judge O'Hagan excluded it, did he not?—I would venture to say that in all these cases no one could give you an answer as to whether a particular holding was excluded. No one could say it was or was not without having all the facts before him; but I would like to give you another case which will be an answer, I think, to some extent to you, Mr. Russell. The case is Murdock *v.* Parkes, another milling case.

Mr. *T. W. Russell.*

3082. These are very common in Ulster, are they not?—They are; but I will say a word about them in a moment, because I have not overlooked your point. Murdock *v.* Parkes was decided this year, and it was under the Redemption of Rent Act. It was 19 acres 3 roods 22 perches, held under a lease for 999 years. There were covenants to maintain the machinery in the mill. The mill had stopped working. It was a corn mill, but all the machinery was in it, and the tenant was bound by covenant to keep it there, and he was keeping it, I think, four pairs of stones or something like that. We held in that case that, having regard to the terms of the lease, and to the apparent value of the water power, and to the fact that there was this machinery that the tenant was obliged to keep in the place, the entire holding was not agricultural in character. But now what I want to say is this: I do not like to quote my own judgments, but in Boyle *v.* Foster I expressly stated that a corn mill can exist on an agricultural holding consistently with the agricultural character attaching to the entire holding, not only mill, but land; and that might

Mr. *T. W. Russell*—continued.

might be the case even though the mill was larger than would be required for the particular holding itself.

Mr. *T. M. Healy.*

3083. That judgment is not reported, is it?—I assure you it is. Furthermore, in the case of scutch mills, these mills might be necessarily or properly used for the tenants on the holdings, and the fact that a man had a scutch mill that was more than he wanted for himself would no more deprive his holding of an agricultural character as a whole than a man who had a steam-threshing machine, or any other implement of the kind, could be held not to be a farmer but a hirer of machinery.

3084. The scutch mill is dealt with in the Act, is it not?—There is a special section in one of the Acts which says that scutch mills are not to be deemed unsuitable, and I used the scutch mill for the purpose of illustrating the fact that a mill might constitute an indivisible part of the entire holding, and yet not deprive the holding of the character of "agricultural."

Mr. *T. W. Russell.*

3085. Are you aware that under the sub-letting clause you cannot have a scutch mill without having workers in the scutch mill, and if the farmer gives a sub-letting to his labourers for the purposes of this scutch mill, which is absolutely necessary for his holding, he is excluded?—I do not say I am aware of that.

3086. I am?—And I think you will find, when I come to the only case I know of as to labourers' allotments. that the decision was the very contrary, and reversed the decision of the Land Commission.

Chairman.

3087. Then we will wait for that at present?—But that is not in the case of a scutch mill. There is a case that has been referred to already. This was an amusing case rather, the case of Crookshank *v.* Law. I see somebody said that we put a tenant out of the Act because he took a field of three acres. Mr. Crookshank is one of the best known and most eminent solicitors in the North of Ireland. He had a residence at Portrush, and there was a field of three acres adjoining his house.

Mr. *T. W. Russell.*

3088. That is a case which was referred to here the other day?—Yes, that is why I mention it. There was a field of three acres adjoining his house, which, according to my recollection, was actually the property of an agricultural farmer. When I say "property," whether he held under a lease or otherwise I do not know, but, at all events, the landlord did not appear, from the evidence before us, to be any large proprietor. Mr. Crookshank took the place (only three acres) at 10*l.* a year rent, and it appeared in the evidence that his motive in taking it was because it is near the Golf Ground and other things, and people coming through this field used to distract the attention of some of the members of his domestic establishment; and to protect his residence he took this place at 10*l.* a year, this field. Of course he cultivated or grazed it when he got it, and then he tried to fix a fair rent upon the man who had let it to him at 10*l.* a year. I may say that a great many of our tenants have been solicitors, doctors, and merchants, and as a rule, with the exception of the fortunate gentleman I have already mentioned in the De Vesci case, they have fared badly with us. The Recorder of Derry dismissed the application on the ground that this was not an agricultural holding; the Land Commission reversed it, and said it was; and we reversed the Land Commission.

Chairman.

3089. How did it come before the Recorder of Derry?—Because he has an alternative jurisdiction to that of the Sub-Commission. The originating notice could be served in either jurisdiction; it rests with the landlord whether it should be changed or not.

Mr. *T. W. Russell.*

3090. The point that is confusing the Chairman is that Portrush is in County Antrim; I suppose the two counties adjoin?—This field was close to Portrush. I think it is in Derry; but we need not trouble about that, there is no doubt it came before the Recorder of Derry in the same capacity as that in which a Sub-Commission would have dealt with it.

3091. As a county court judge?—Yes. He dismissed it; the Land Commission reversed his decision; we reversed the Land Commission and restored the decision of the Court below, and held that Mr. Crookshank could not fix a fair rent, because it was not an agricultural holding. I may mention, once for all, that we cannot find any affirmative exclusion of such cases in the Act; if instead of using the words "not agricultural or pastoral" we could only find the words "*bonâ fide* farmer" to describe the tenant who is to be admitted, it would relieve us of a great many of these questions.

Mr. *Sexton.*

3092. That is, if there were words referring to the tenant and not to the holding?—Yes, or words showing that taking the productive character of the soil as a means of making a man's living by farming it, was what would put him in to the Act. In every one of these cases that I am giving you, considerations of that sort have had to be taken into account. I decline altogether to discuss whether the decisions are right or wrong, I give you the reasons and grounds of the decisions, and the matters that have been taken into consideration, and the principles on which we have gone.

Chairman.

3093. Will you now give the Tolls case to which Mr. Healy referred?—Yes. But there is another important case of Smyth *v.* Douglas. In that case there were 12 acres of ground, but detached from the 12 acres there was the Petty

Chairman—continued.

Sessions Court House and the rent office of the landlord in the town of Dervock near Portrush. These houses were let. We held that they were not agricultural, and, there not being any homogeneous holding, that we could not bring them within the Act, although the 12 acres, if held alone, would have been within the Act, or if there had been power to divide the agricultural part from the other, and for the tenant to give back the non-agricultural part to the landlord, that might have got rid of the difficulty; but it is not within the Act and we cannot put it there. Now I come to Wall *v.* Eyre. Wall *v.* Eyre is the Tolls case.

Mr. *T. M. Healy.*

3094. I think you said that "a large substantial part" of the holding was not agricultural?—I am not aware that I used the words "a large substantial part of the holding." Do you mean that I used them here?

3095. Yes?—Perhaps so, with regard to Boyle *v.* Foster. The case of Wall *v.* Eyre is a case in which there were 42 acres 0 roods and 33 perches, let together with all the tolls of the fairs and markets of the town of Freshford. The rent was 44*l.* 6*s.* a year; the valuation was 35*l.* on the land and buildings, and 4*l.* a year on the tolls; there was a separate distinct valuation on the tolls. Of course everyone knows that the meaning of letting tolls is that they are to be collected by the tenant. There was evidence that for a considerable number of years after the date of the lease (which I have not got) the tenant did collect the tolls, and got, I do not say a large substantial sum, but got an appreciable sum of money out of them every year.

3096. Ten shillings a year, was it not?—No; the evidence was that approaching the time when he served his originating notice, the tolls fell off; they were not collected, but whether they were not collected because he did not choose to collect them, or whether they were not collected because they were not collectable, we could not tell; what we had before us was that they were let, that they were in the lease, that they were a distinct subject-matter; that they were not agricultural; that they were separately valued; and whether it is big or whether it is little, the case does raise the point that if there is one separable, substantial, portion of the subject-matter that is not agricultural or pastoral in character, and that cannot have that character attributed to it, we cannot fix the fair rent, just as we cannot fix the fair rent if there is a substantial sub-letting without consent. That is the principle of the case, right or wrong, and I do not know yet, I fail to see, how you ever can give an agricultural character to a thing that is partly agricultural and partly not.

3097. *De minimis non curat lex*?—That is another matter. *De minimis non curat lex* may apply very well if you have no question of jurisdiction involved, but you cannot say that anything is a *minimum* in the eye of the law if it is appreciable. You will come to that afterwards on the sub-letting point, because we had the difficulty before the Act of 1887, and we had gone so far

Mr. *T. M. Healy*—continued.

as this (the Master of the Rolls mentioned it) that we would be very slow indeed to exclude a holding if there was some portion of it excluded, if the portion was so small that we need take no notice of it. In that sense, perhaps, *de minimis non curat lex* would apply, but if there is an *appreciable* piece of property, I do not see how you can make jurisdiction attach to it by ignoring it, when the law does not do it; but, in reference to the Tolls' case, I wish to repeat now (let not the fact be forgotten) that they were separately valued; they were, all through the lease, made a material part of the subject of demise, subject to particular covenants; and furthermore, the tenant collected them, and they began to fall off shortly before the time when he came in with his originating notice, claiming that they should be left out of consideration altogether. Whether he had done that wilfully, or whether he had not, I do not for a moment suggest, because I do not think it would have made the least difference, even if he had been able to prove that these tolls could not have been collected; we could not wipe them out of the lease, nor out of the valuation.

Chairman.

3098. Now you will tell us about demesne cases, will not you?—I am afraid I must ask you to go back to the definition, to the Act of 1881, Section 58, Sub-section 2.

3099. "Any demesne land"?—Those are not all the words that describe what the Act does not apply to. Pardon me for pointing this out, because it is material. You will observe that what the Act does not apply to is "*tenancies* in any demesne land." That point I do not put as a technical one, but I want to show that tenancies in any demesne land are the subject-matter which is excepted from the Act, to which the Act does not apply. The importance of that is this: that it assumes, to begin with, that you have got demesne land subject to a tenancy, and, to bring the holding within the Act at all, it must be agricultural or pastoral in character, and, furthermore, it must be in the possession of a present tenant; that is, a present tenant holding in the way I have described, as an occupier. Now, difficulty No. 1: "demesne land" is a perfectly understood legal term to all lawyers. It has two meanings, and neither of them will fit in here at all.

3100. What are the two meanings?—"Demesne land" in the old feudal sense I will take first. You will pardon me for lecturing you in jurisprudence, which I am afraid I am doing. Demesne land, in the feudal sense, includes all lands of the lord of the soil that are not held by freeholders under him, and it will include all lands in the hands of tenants from year to year, as well as land actually occupied by the lord himself. Now, that is the feudal sense. Of course nobody could put that in here, because, if so, this Act would not apply to any land in the hands of a tenant from year to year.

3101. What is the other meaning?—The other, the popular dictionary meaning, and a legal meaning too, is land actually occupied by the lord of the soil in connection with his own residence, and

Chairman—continued.

and reserved by him for his own use. That will not do either, because the holdings that are to be excluded are tenancies in demesne land; therefore neither of those meanings can be brought in at all; one of them would put all tenant farmers from year to year out of the Act; the other would leave nothing at all for the exception to apply to. That is the first little legal difficulty with which this question has to be commenced.

3102. That is part of the "foreign language" you have told us of?—Yes; here it is pure foreign language to the lawyer, because the word has a recognised legal meaning, which will not fit in at all. Well, there are a number of these cases. Griffin *v.* Taylor is the first of them. We tried (and I tried longer than anyone else, and got into a minority of one in the end, before I gave it up) to hold on to the idea that "demesne land" was land that the landlord intended to reserve a potentiality of getting back at some time for use for himself. Of course if the mansion house had gone with the demesne land to a tenant, you could not possibly put a different construction on the Act where the two were together. It cannot apply only to land separated from the house. The first case we had, of importance, is Griffin *v.* Taylor. In that case there was a handsome demesne of some 680 acres. There was a lot of land, about 20 acres, taken by an agricultural tenant, but every scrap of it was surrounded by plantations and land actually in the landlord's own occupation, and forming part of what was undoubtedly demesne land in every sense, being in his own occupation for his own use. It was contended that the holding was not demesne land, because it was agricultural or pastoral. The Sub-Commission had held it to be demesne. The Land Commission held it was not. I ventured to illustrate it by saying that the holding was an Archipelago; that there were a number of islands of agricultural land surrounded, or separated, by a sea of demesne land. Lord Chancellor Sullivan was the Lord Chancellor; we held that the holding was demesne land within the Act.

3103. All these islands, do you mean?—Yes, all that the tenant was in possession of. All the plantations were excluded from the tenant's holding altogether, he had not any of them; but he had fields that were surrounded by plantations, intersected by plantations, and there was a thing which we always look for, a demesne wall. There was also a very material provision, that the tenant should not put up any residence on the land. That was an easy case. That was the first case that came up.

Mr. *Sexton.*

3104. Who were the judges in that case?—That was decided in 1884 by Lord Chancellor Sullivan, Lord Justice Barry, and myself.

3105. You dissented from the other two?—I did not.

3106. I understood you to say so?—Not at all; we agreed.

Chairman.

3107. I think you said you had been in a minority of one, that is what Mr. Sexton means?—Oh, I said I held on, longer than anybody else, to the idea of demesne land reverting to the landlord. But the case in which I was in a minority of one was long subsequent to Griffin *v.* Taylor, which is a leading case in a sense. The holding was cut up by plantations. It was in a demesne of 680 acres. It was taken at different times, though it had been in the hands of the tenant from 1836. The case is reported in 16 Law Reports (Ireland). The judgment is important, because Lord Chancellor Sullivan dissented from the view put forward by Mr. Justice O'Hagan, founded on a previous judgment, I think, of Lord Fitzgerald, when he was a judge, to the effect that "demesne land" meant ornamental land.

Mr. *T. M. Healy.*

3108. And there was a separate rating in that case, was there not?—There may have been. In this case, just as in all others, a great number of circumstances have to be taken into account, separate rating, demesne wall, position of residence, position of plantations, and all these things, every consideration. These will not all concur. The first thing we look to is the instrument of letting, and frequently it describes the land as demesne. Where the land was described as demesne, before it was anybody's interest to describe it untruly, we generally take that description given of it at the time, as representing what it was; but if we find "demesne land" put in afterwards, it does not produce so much effect on the mind of the Court. I think I need not trouble you with a number of the cases.

Chairman.

3109. Only any case which seems to illustrate the principle?—The next case I would refer to, then, is a case which I have mentioned already, in which I had the misfortune to differ from the other members of the Court. Though I say that, the decision of the majority is right, and is binding upon me, and I was wrong. It was the case of Magner *v.* Hawkes. The lands were lands at Kilcrea Castle, near Cork, and the special peculiarity of the case was, that the land had originally been let as undoubtedly agricultural, and not demesne land (a large tract of it) for a long term — hundreds of years, I forget how many. It was the lessee, if anybody, who turned it into demesne land. He built a house on it, and he resided in that house for a long time. He was a gentleman of position; it went to other members of his family, and it was a handsome place. There was strong evidence that it was demesne at that time. I think both the Sub-Commission and the Land Commission had held that it was demesne.

Mr. *T. M. Healy.*

3110. The castle was an old ruin, was it not?—The castle was in ruins, but the house had been built and was inhabited. We were greatly pressed by the fact that the Sub-Commission and the Head Commission had both, as well as I recollect, decided that this was a demesne. The place was finally let to a relative of the family, and he assigned it to Magner, the tenant.

Mr. *T. M. Healy*—continued.

I think he became poor in circumstances, before he assigned it to the tenant, and Magner, the tenant, was not the person who was the lessee at the time of the letting. The case was very much debated. We had it further argued. The first time I think it was heard by three judges, and on the second occasion it was heard by five, the Lord Chancellor, the Chief Justice, the Chief Baron, Lord Justice Barry and myself, and four out of the five agreed with the Sub-Commission and with the Head Commission, and held that it was demesne land, because it was of that character, and there were a great number of circumstances looked into, the lease, and all the rest of it. But that case, you see, decided that it might be demesne land, although the fee simple originally had not been demesne. The head lease was a very long term. A case has happened since and recently, that I am bound to say has wholly converted me from the opinion that fee simple is necessary.

Chairman.

3111. In the case of Magner that you are speaking of, you were in a minority of one?—Yes.

3112. And your view as against theirs was what?—My view was, taking all the circumstances of the case into account from beginning to end, and they were very special, first, that the title was not a fee-simple title when it was originally made demesne, because it was let for 200 years or some very long period; they met that by saying, "for all practical purposes it is a perpetuity." The next point was the house; I did not think it was so much too good for the size of the holding that it ought to be dignified with the name of a mansion house, or such a residence as demesne land implies. It certainly was a handsome house; the place was nicely planted, and the position of the lessee was even referred to, that he was a gentleman, and kept hounds, and therefore was not a farmer; he was, at one time, living by farming—not living by farming this place alone, but living by farming this place and another place.

Mr. *Sexton.*

3113. Another and a later time I suppose?—I really forget how the dates went; but there was another matter I relied on.

Mr. *T. M. Healy.*

3114. The present tenant did not occupy the house?—I have already said that the man who came to fix a fair rent was not the lessee, but of course he could have no better right on this question of demesne than the man from whom he bought. If the man from whom he bought was not excluded, he could not be excluded. The point I relied on very strongly was that the owner had made a will, by which he gave power to his trustees to let the land to the best advantage, and to pay money to his wife, and to provide for his children; but unfortunately the trustees did not prove the will, and the letting was made, not by the trustees under their power, but by the personal representative under her power, as administratrix, this being a chattel term, which, as the Solicitor General knows, goes to the personal representative, and not to the heir. All those circumstances were taken into account, with the result that I found myself alone, with the Sub-Commission, the Land Commission, and four judges of the Court, all against me, and of course I was wrong. But I want to give you two cases now, in addition to that.

Mr. *T. M. Healy*—continued.

3115. You want to give one more demesne case?—Yes, if I am not keeping the Committee too long. The first case I should like to give in connection with the other, because I confess it produced an effect upon me as to what I had said before. You understand that these questions come to us only as the cases arise, and that every year more cases are turning up, each case depending on its own facts for its result. The case I wish to mention is a case in which Lord Gormanstown was the landlord, and a gentleman named Pratt the tenant. We decided it this year, on the 19th April. I believe Mr. Pratt (whom I remember Lord Justice Barry to have described as "posing" as an oppressed tenant) had some very large landed estate of his own; he had a very handsome demesne admittedly, and he lived on it. He took from Lord Gormanstown a piece of unquestionably agricultural land, but he took it only from year to year; he put his own demesne wall round it, he planted it, he fenced it, he threw it into his great demesne, a thoroughly handsome place, with a fine residence on it where he lived; then he served an originating notice on Lord Gormanstown to fix a fair rent. I cannot find in the Act how we put him out, but we did. We held that his holding was demesne land, we held that he had made it demesne land, and therefore we decided, I am afraid, that you can have "demesne land" in Ireland which is held from year to year, and which has been made demesne by the tenant.

Mr. *W. Kenny.*

3116. Was it not decided also on the ground that it was let mainly for the purpose of pasture?—It was not decided on that ground, nor, as well as I remember, could it have been.

Mr. *T. M. Healy.*

3117. Not as it was non-agricultural?—No, it could not have been decided on the exception of land let wholly or mainly for purposes of pasture. I believe it was not rated at 50*l.* The section says, "Any holding let to be used wholly or mainly for the purpose of pasture, and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides"; and this holding was actually incorporated with the demesne annexed to Mr. Pratt's mansion house. I do not remember the pasture point having been brought forward, but it may have been.

3118. I think it was argued before the court below

Mr. *T. M. Healy*—continued.

below, certainly?—I am speaking of the Court of Appeal.

3119. I thought it was argued before you?—I do not remember it; it may have been.

3120. Was it a lease case or a yearly tenancy case?—Pratt *v.* Gormanstown was from year to year. That was the difficulty of the case. The difficulty was that he had taken this bit of land from year to year when it was purely agricultural land, and held it from year to year. He served Lord Gormanstown with an originating notice after he had incorporated it (for that was found) into the body of his own demesne.

3121. If he had gone into the court before he had incorporated it, would it have happened?—I do not know. I think we should have found it very hard to keep him out. There are two more demesne cases which I must mention, if you will permit me. They are both cases of great importance. The first is Hewson *v.* Listowel. It is a case you should know, because it is reported, and it states our principles fully. That is far the largest case we ever had as a farm. This place, Ennismore near Listowel, was originally a demesne of an old Kerry family. They had a mansion house and about 120 acres of undoubted demesne land, with an adjoining estate let to tenants. It is the place from which Lord Listowel takes his first title. It is an old family place. In 1812 the house was in the possession of two old ladies, members of the family. Mr. Hewson, a relative of the family, was brought from Limerick, a gentleman, for the purpose of being established on the estate as a farmer, and he got some 1,000 acres of other land, but he was not given possession of the house or the 120 acres about it until the old ladies had done with it. Then a lease was made to him of the whole 1,156 acres, including the house and the demesne, in which the holding was described as "the entire farm and lands of Ennismore." The lease contained a great number of provisions about cultivation, and a covenant to wall in the entire farm, but down to a very late date, in correspondence even and in writing, the tenant had freely spoken of the house and of the demesne as a separate thing. Of course if it was, it would have been out of the Act. The Land Commission held that it was out of the Act, and that it was still demesne land. It was let for lives, and the last life was that of Mr. George Hewson, the tenant. He is a very well-known gentleman in Ireland, a gentleman of high position and a grand juror. This is his property; he lives by farming it. The pink paper said there had been a great deal of expenditure on drainage, and so forth, that the whole of this great tract of land had been farmed by the tenant in the best manner, and there was a very laudatory description of his agriculture. I rather think, as well as I remember, the Sub-Commission fixed the rent; but whether they did or did not, the Land Commission held that, because there was this house and demesne land, they could not fix a fair rent upon it. We held that, seeing that the mansion house and the demesne had been thrown into one holding with the 1,000 acres by the lease, under the description of "the entire farm and land," and that the holding was, as a whole, a great farm, it was agricultural in character; that it was not demesne land; that the effect of the lease was to identify the character of the house and hundred acres with the rest of it. Now, that is a case on one side. I have one other case in which we reversed the Land Commission and went fully into all the considerations about the matter. It is the very last case, and a very striking one, indeed, on the opposite side; it was decided on the 26th April of this present year. The holding consisted of about 90 acres in the demesne of Baron's Court, the Duke of Abercorn's demesne, inside the boundary of the demesne of Baron's Court, as it appeared on a map, dated 1867, of "The Demesne of Baron's Court," when it was nobody's interest to give it a wrong description. The holding consisted of two parts, in two different town lands, but adjoining each other. The first of these town lands, Cloonty, had been taken up by the Duke of Abercorn between 1830 and 1840, and he had done a thing very well known in the north of Ireland; he had bought out the tenants. What he got he planted; he improved the whole of it, for 10 or 11 years he tilled it himself, and as soon as he had got his plantations all right, and the land improved and drained, he relet parts of it to tenants, including Watson's predecessor, who got some 90 acres in 1851, it being then surrounded by the demesne. From time to time Watson had had four plots taken away from him and thrown into the plantations, but at the last came the transaction on which the whole case turned. The Duke of Abercorn in 1875 wanted 11 acres of this town land of Cloonty to add to his plantations, which he had already extended in every direction. It is the finest demesne in Ireland, I believe; I have never seen it, but I believe it to be so. Well, what he did with Watson was this: He offered to give him 19 acres of the adjoining town land of Leglands, in exchange for the 11 acres that he wanted to throw into his plantation, and there was evidence that when he went to Watson and said he wanted him to give up the place, Watson said he would not give it up; that was relied on to show that he was not a mere demesne tenant. We did not hold that sufficient in itself. This Leglands portion was bought by the Duke in 1846, and at that time there were 45 tenants on it. It was all tenantable land in 1846. The Duke of Abercorn bought out all of those but seven, who remained on until he took up the land from them in 1871, and did exactly the same thing that he had done at Cloonty; he planted it, and walled in parts of it, and tilled it for a couple of years, and in 1873, after he had only had it for two years, he gave Watson 19 acres of it in exchange for the 11 acres he had taken up in Cloonty. In that state of affairs the originating notice was served, and the holding was described on the pink paper as being one from no point of which could you see anything except the Duke of Abercorn's plantations, those plantations being admittedly the demesne plantations of Baron's Court. You could not get into the holding

Mr. *T. M. Healy*—continued.

ing without coming through them, and we held, whether right or wrong, that the Sub-Commission was right, and that the Land Commission was wrong, and that it was demesne land. I need not say that there had been no attempt whatever to evict Watson, to put him out, or anything of that sort; he was remaining on there. He served his originating notice to fix a fair rent. He brought the trouble on himself by that; but that is the case.

Mr. *T. W. Russell.*

3122. That is quite a recent case?—It was decided in April of this year.

Mr. *T. M. Healy.*

3123. Was there a house on the holding?—That was another matter relied upon. There had been two or three small cottages on the place long before, but according to my recollection there was no house on the place at the time of the dispute except one little place held by some old woman, not by the tenant, and occupied apart. You cannot expect me to know all the particulars of every one of these cases. I have gone over my own notes, but I do not like to speak about details unless I am certain, or think I am.

Chairman.

3124. Had you before you the grounds of the Land Commission in holding it to be agricultural?—We had. It was not a question of "agricultural," but of holding it not to be demesne. The first ground was that they were not satisfied, on the evidence, that this particular tenant had not paid money, when he went in, to a previous tenant. That would have been more than 40 years ago. I really forget what the other ground was, but we went very much on the pink paper, and above all (what we have always looked to) we went on the map describing it as demesne, and representing it as demesne, at a time when nobody had any interest to misdescribe it.

3125. That concludes the demesne cases, does it?—Yes.

Friday, 1st June 1894.

MEMBERS PRESENT :

Mr. Brodrick.	Mr. Macartney.
Mr. Clancy.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Fuller.	The Solicitor General.
Mr. T. M. Healy.	Mr. Sexton.
Mr. W. Kenny.	Colonel Waring.
Mr. Leese.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

The Right Honourable GERALD FITZGIBBON, P.C., again called in; and further Examined.

Chairman.

3126. I BELIEVE you desire to supplement certain answers that you gave on Tuesday last before we resumed. We left off at "Demesne"?—To this extent only: I have read the Notes of the Evidence, and there are a few small points that, perhaps, do not come out completely.

3127. But I should like, if you do not mind, before you go through those, to know (if you could answer the question) upon what principle you have gone in referring the Committee to the decisions in particular cases. It has been pointed out, or it has occurred to some Members of the Committee, that you have referred to no fewer than 20 unreported cases, cases of which there is, so far as we know, no record. Now, will you kindly explain to the Committee the principle on which you have gone in your references to particular cases?—I thought I explained on the last day what the information is that I have here. As regards the particular cases that I have referred to, I can tell you the principle on which I came to refer to each of them, but I am perfectly ignorant how many of them are reported and how many are not. I had but very little time to make up a very big subject, and except by going through the indexes of the reports, and finding out how many of those cases were reported, I could not tell you which were reported and which were not. Until they are cited before us we do not know whether cases are reported or not; we cannot read all the reports, and therefore, as to how many of those cases are reported or how many are not, I cannot speak. Now, I will tell you in a moment the principle on which I have gone. When I got your summons, I took all my own notes, which are indexed each year according to the Courts from which the appeals come, and I made a complete list of all the cases that came to us from the Land Commission.

Chairman—continued.

Expecting that it would be necessary to arrange them alphabetically, although I took them out beginning in 1882, I put a head line, rather than a complete abstract of each case, on a separate piece of paper which I have here. I found that it was more convenient to keep them in their chronological order, and they are so kept. They are all there, every one (*exhibiting the documents*). You will see that I gave you, I think, on my list 202 cases.

3128. Yes?—There are 211 on the Registrar's list, which I gave you also; but my list goes to 1894, and there are 12 cases in 1894 that do not yet appear on the Registrar's statistics which are made up annually. There are therefore 21 cases less in my list than there are in the Registrar's list. I account for these 21 by their being cases which were not opened in Court, or were stated to be settled, or were withdrawn, or in which we were only asked to make an order on consent. These notes are my own notes jotted down from counsel when a case is opened; but as far as I know and believe, every case that was opened by counsel in Court, when I was there, is included in my 202. During the 15 years I was once absent from illness; I was two or three times, perhaps four times, casually absent from some other cause, but with that exception you have all the cases. That is what I have here. Then, as regards the selecting or mentioning of particular cases, I took out on a separate paper, and have been trying to make, a connected arrangement of what I have here.

Mr. *T. M. Healy.*

3129. May I put to the Lord Justice the suggestion I have made to the Committee; I suggested whether it would not be possible for

Mr. *T. M. Healy*—continued.

us to get the very valuable record which I think the Registrar keeps, the short synopsis that is made by Mr. De Versan, the Registrar; that is to say, put into two or three compendious sentences?—That would not cover the whole time, because I know that Dr. Ferguson's (the previous Registrar's) book does not contain as full a note as Mr. De Versan takes. I do not know whether I should call it "official" or not, but we constantly refer to it. It would be very voluminous, but I do not think there would be any difficulty in your getting it. Of course, it should be all copied out.

3130. May I suggest this as to remuneration: it would be a very troublesome job, and the Committee would have to defray any expense there might be; we would not expect to throw any such work on the officials of the Court of Appeal?—That is entirely for the Committee; but I want to complete what I was saying about the selection of the cases. I do not think I mentioned any case on the last day except cases that had been mentioned previously in the evidence, or which were cases that appeared to me to be of special importance. I think two or three times you stopped me about mentioning more cases than were necessary. I think I gave you in each instance the earliest leading case, and a case or two on each side; that is, a case for the tenant and a case for the landlord; and I gave you in one or two instances a "line-ball" case, or as near it as I could go, and I think I mentioned to you in each instance the last case. I can always give you any case you refer to, or that you think of importance; and if you will allow me I will give you the names of any cases that appear to me to be of any importance; and I can even make out a list of them.

Mr. *Sexton.*

3131. This might facilitate the Committee; I do not know whether my suggestion is right; the Lord Justice will understand that if it is wrong it is wrong through ignorance; but my suggestion would be that perhaps you might be able to place your notes of all the cases at the disposal of the Committee?—Really my note-book would be quite unintelligible to anyone except myself. I could give you a list of all the cases that we have had in the Court, and I could give besides, the name of each of them, what the subject of each was, and then, if there were any of those cases that the Committee thought of any consequence, I could easily furnish you (in writing, I suppose, would do) with the leading facts, or could get for you what Mr. Healy has been asking about. You could get the Registrar's note, but I would suggest that it would be perfectly idle to get out all the cases that are already officially reported, of which there are a great many.

Chairman.

3132. Mr. Healy does not desire that?—In the second place, there are a great many cases which have no feature of importance in them at all. For example, I mentioned on Tuesday last, it often happens on the opening of a case that it

Chairman—continued.

does not appear to have much in it, and we do not call on the counsel for the other side sometimes. Cases of that sort get on the Registrar's note, although they would be of but little consequence; but no doubt you could get it in any case you thought of importance,

3133. Will you kindly consider whether, either by the method suggested by Mr. Healy or Mr. Sexton's method, with your own criticism on it, you could give us a list; not only a list of the mere names of the cases, but the substance of the cases?—Well, there is a caution I must reserve upon that. If I am asked to give the substance of a case, it is almost certain that something left out will be supposed to be of consequence. It is impossible to give you the substance of a case without exposing myself, as it were, to the imputation of either leaving out something that appears to me not of much consequence, or of putting in something that people looking at it from the other side would think of no consequence. I can tell you what I could do (perhaps it will be the best for you); that is, to give you a complete list of these 202 cases by name. The number is a little less than 202, because 21, you may remember, are consolidated, and I can put opposite the name of each what the subject of it was; that is, whether it was town parks, or whether it was demesne, and giving what the decision was.

3134. I think that certainly would be some clue to the labyrinth?—If you will allow me, I will hand it in as part of my evidence. I may say, once for all, I am here to give you every information that I possibly can.

3135. I am sure of that?—And I am not sparing myself any trouble to do it accurately and fully.

3136. There is no doubt in the mind of the Committee about that. Now, will you kindly go through the corrections that you wish to make; or supplement, rather, what you have already said?—The first bears, indeed, on that very matter of my notes. In several instances you will find details, such as acreage and rent, given in my evidence. I have taken them out of my own note-book, where I jotted them down from counsel's statements. Very often the acreage is Irish measure in the documents; I believe in all Land Commission proceedings it is English measure, and I cannot tell you (I have no actual recollection, of course), in such a number of cases, whether the acreage that I have given is not sometimes English and sometimes Irish.

3137. Then we may take it that where sometimes details have been given, such as acreage rent, Irish measure, and things of that kind, there may have been one or two slight inaccuracies?—They are not "inaccuracies." I do not think they are inaccurate; I am not conscious of having taken anything down inaccurately, but frequently the documents give the measurement in Irish measure, and the counsel do the same; and I cannot tell you now whether they are English or Irish acres. The same remark applies to some more or less passing observations on details; those are all matters that counsel stated, and I jotted them down, but how far they

appear

Chairman—continued.

appear on the actual evidence in the cases I cannot tell.

3138. On Question 2940 you wish to say something, I think?—Yes; I was speaking on Tuesday about the constitution of the Court, and I think it right to make that complete. I mentioned on Tuesday that there had been seven holders of the office of Lord Chancellor, two of whom held it twice each, so that there have been nine changes in that office; there have been three Chief Justices engaged in these cases, Chief Justice May, Chief Justice Morris, and Chief Justice O'Brien. The present Master of the Rolls, Mr. Porter, succeeded Sir Edward Sullivan as Master of the Rolls, and Lord Justice Barry succeeded Lord Justice Deasy; the Chief Baron and I have both been there from 1878 down to the present time, he from 1871; therefore the Court has included 14 individual judges. I do not take a note of who the Lord Chancellor is, but the chronology will tell you in every case who was the Lord Chancellor.

3139. Then you have a correction to make as to Adams *v.* Dunseath, have you not, Question 2943?—Yes; I stated that Adams *v.* Dunseath was a case stated by the Land Commission of its own motion under the statutory power. I got for the first time yesterday (I had never seen it until yesterday) the final order in Adams *v.* Dunseath, and I find it was stated on the application of the landlord. We heard it by the full Court, because it undoubtedly was heard at the desire of the Land Commission.

3140. Then as to 2946 you wish to say something?—Yes; I told you the difference between an appeal to our Court and a re-hearing; and looking over the Notes of Mr. Fitzgerald's evidence I find that at Questions 481 and 482, and in other places, the Court of Appeal is spoken of when it does not mean my Court, but means the Land Commission. It does not always mean so, of course, but in that particular case it does.

3141. Then what do you wish to say a to 2947?—I only want you to bear in mind that I have always spoken of the Court of Appeal as the Court to which I belong, but that you must be cautious in some places in the evidence of others as to that. Perhaps you would allow me to refer to one instance, to show what I mean. Question 481: "Now, coming to the procedure of the Court of Appeal, you gave an account of that procedure, but it is not quite clear to my mind whether the Court of Appeal reviews the decision of the Sub-Commissioners as to the improvements which are to be exempt from the rent; if so, on what evidence do they do it?" There "Court of Appeal" means the Land Commission. It does not mean my Court.

3142. Then in 2947 you said (that was on the subject of the materials on which the question was stated) the materials are "the case and nothing else"?—"And nothing else." That might mislead. When a case is stated it frequently incorporates documents, and whenever it does so, or even refers to them, they become part of the case; therefore in a good many

Chairman—continued.

decisions on cases stated we had documents of title and leases which did not appear on the face of the case except by reference. I only want to let you understand that on these cases stated, therefore, we had something more than the case, though to a lawyer it is part of the case, and incorporated as such. Would you allow me to make one observation in connection with that subject? I see Mr. Fitzgerald, at Question 395, spoke about the pink paper not being evidence.

Mr. *T. M. Healy.*

3143. That was evidence in the Common Law Courts, I think?—It occurred to me to make that remark.

Mr. *T. W. Russell.*

3144. Before any tribunal, such as the Civil Bill Court, it would not be evidence?—These papers are prepared in the discharge of their duty by the Sub-Commissioners, and in all proceedings on appeals to us we treat them as evidence, and consider we are legitimately entitled to look at them, as part of the materials that were before the Court below; but if there were other proceedings in another Court, then a serious question would arise whether they were admissible evidence or not. Bills have been brought into Parliament, I believe, to make things that people do in the discharge of their duty general evidence; and I cannot give you a better instance than our Ordnance Survey in Ireland. You cannot produce an Ordnance Survey map for the purpose of showing that a house was in a particular place, or that a fence was in a particular position 50 years ago. You may put the map into the hand of a man who remembers the place, and he may tell you it is right; but the map itself is not evidence. Exactly in the same way with the pink paper; nothing entered in that would be evidence of the facts stated in it in any other proceeding. I wish to make it clear that it is evidence in all Land Commission proceedings; we look at it and use it. Then, also, you asked whether our judgments were not all reported authentically. Every judgment of the Court is taken down officially, and all the papers in the case are accessible to anyone who wants them. The reporting authentically to which I referred was the reporting for the purposes of publication. The Land Commission can get an authentic report of every case, if they so desire.

Chairman.

3145. Now Question 2955?—I gave you 12 cases in 1894; there is one other case, a demesne case, part heard, and standing for further argument, the case of Graydon *v.* Morgan's Charity, which raises a new and curious question: it is a case where a mansion house and demesne were let by the trustees of a charity, and the question for argument is whether, the trustees of a charity being the landlords, it can be demesne land within the meaning of the Act.

3146. Then on the statistics, 2959?—I have not included in my figures any of the cases that came from other courts than the Land Commission, although there are many and very important cases, which deal with questions arising on the

Chairman—continued.

Land Act, such as Roe *v.* Cooney, and Seymour *v.* Quirke. I could not do that for this reason: I should have had to go through all the appeals, nearly 2,000 of them, to take out those in which questions on the Land Act arose; but I think all the important cases of that class are reported, therefore my statistics and the 202 cases do not include such cases as Roe *v.* Cooney, Seymour *v.* Quirke, and others. A number have been mentioned by others, which came from the High Court and from the Land Judges' Court.

3147. Would you give us, a little more fully, the distinction between the 202 cases which you have referred us to and the other cases that you are now speaking of?—The 202 cases are all the appeals or cases stated that came to the Court of Appeal from the Court of the Land Commission from 1882 to 1894; the others are appeals that have come from the Exchequer and Queen's Bench, or from the Land Judges, who have continually before them questions arising under the Land Acts. For example, the question of a present tenancy is often raised by bringing an action of ejectment. In the action of ejectment the question is: Is the plaintiff entitled to the possession of the land? Whether the plaintiff is entitled to the possession of the land may depend upon whether the person in occupation of the land has or has not the rights of a "present tenant." That question will be determined in the ejectment proceedings, and will raise a question on the Land Act; and many of these questions have been raised in that way. The only one that went to the House of Lords was raised in that way; and these cases (for the reason that it would have been physically impossible to do so without enormous labour) are not included in the 202.

3148. In those cases which are excluded on the ground of physical impossibility, do you believe that any question was raised which it is important that this Committee should be made aware of, as elucidating the principles and practices of the Acts?—Certainly; you have had a great many of them referred to, Peyton *v.* Gilmartin, and a great number of others.

Mr. *W. Kenny.*

3149. Bolton *v.* Barry?—Bolton *v.* Barry; there are a great many of them. I believe nearly all the important ones are reported; and certainly any to which I wish to refer in the evidence are reported. I could not abstract my notes of them; my index is an index by courts.

Chairman.

3150. They are all in "Cherry," I think?—I think you will find them all in "Cherry;" all that are reported.

3151. Now Question 2966?—Question 2966 has some inaccuracy in it; it says that the Ulster custom cases were consolidated; the 21 Brooke cases were consolidated; but there are one or two more; and 2968 is entirely altered

Chairman—continued.

owing to a misprint, which will of course be corrected.

3152. That is a misprint which you will correct?—I am correcting it now.

3153. Now 3,000?—Mr. Healy asked me whether a judgment relating to mill cases was or was not reported; I told him I thought it was, and I have got it.

3154. 3000 is that?—I am wrong; at 3000 I was asked the question whether a statutory tenant from year to year was entitled to surrender.

3155. Yes?—At page 286 of "Cherry" you will find the case of Torrens *v.* Cooke, in which Lord Justice Naish said, "There is nothing in the Act to prevent the *bonâ fide* surrender of an old and the creation of a new tenancy." I wish to refer to that, because I had said that I did not know that it had actually been decided.

3156. Then, in Question 3071 you think your answer inaccurately reported?—I must have failed to convey myself, or it was inaccurately reported; it was about the strawberry bed case.

3157. What is the correction you desire to make?—It appears in the report, "We held that the cultivation of strawberries could not extend sufficiently to be worthy of the name of 'agricultural.'" I said the reverse, and will correct it.

3158. Then Questions 3078, 3080, and 3083?—Yes; I have to ask permission to refer to the mill case, and this is important.

3159. Now, what have you to say about the mill case, Boyle *v.* Foster?—I was asked about the mill case (Question 3083). Mr. Healy said, "That judgment is not reported, is it?" and I said I thought it was. It is reported, and I ask leave to read it because it answers better than I could have done hastily a question that Mr. Russell asked. Boyle *v.* Foster is in 30 Law Reports (Ireland). The first passage I wish to refer to is in the Lord Chancellor's judgment, at page 628: "It was decided long ago, shortly after the Land Act of 1881 was passed, in the case of Leonard *v.* St. Leger Barry, that where a substantial part of the demise was demesne land the whole was taken out of the jurisdiction of the Court. In that case there were 60 acres in the holding, of which 21 acres were demesne;" and Mr. Justice O'Hagan's judgment is cited. Then it goes on: "Now the reasoning of O'Hagan, J., there has been acted on uniformly in every case, and the reasoning applies equally to anything which excludes a substantial portion of the demise from the jurisdiction of the Court." The passage in my judgment about the mill is this (it is on page 630): "I decide this case on the broad ground that this, as a whole, is not an agricultural holding. I make no point between 'agricultural' and 'pastoral,' but I hold that it is to a substantial extent a mill holding." Now, this is the passage I wish to mention: "There may be many cases in which mills and other buildings stand upon holdings which, nevertheless, are, as a whole, agricultural, and it does not follow

Chairman—continued.

follow, because part of a holding is of a special character, that the character of the entire is such as not to come within the Land Acts; but here the greater number of the provisions and the general scope of the lease as to timber, water, the mill, &c., are incompatible with the idea of this being an agricultural holding. That agriculture was not the main consideration, nor milling merely ancillary, appears from the figures adopted by the valuers"; and I then went through the figures to show that by reducing the mill rent from 80*l.* to 40*l.*, but leaving the condition in the lease standing, that the mill rent was to be reduced in case the mill was burnt until the landlord rebuilt it: "If the mill is burnt, and the 'fair rent' reduced by 80*l.*, 40*l.* only will be knocked off the rent of the mill itself, and the other 40*l.* will come off the rent of the land, which has been fixed as a 'fair rent' at 116*l.*, but which by the burning of the mill may be further reduced to 76*l.*"

3160. In the four questions, from 3103 to 3107, there is some confusion arising from your remark in 3102?—There is, and I will correct it.

Mr. *T. M. Healy.*

3161. Before you come to that, may I ask you whether you make any correction of 3095?—I will look at it.

Chairman.

3162. That is the Freshford Toll case?—I do not see anything wrong there.

Mr. *T. M. Healy.*

3163. You state here (Questions 3095 and 3096), "Of course everyone knows that the meaning of letting tolls is that they are to be collected by the tenant. There was evidence that for a considerable number of years after the date of the lease (which I have not got) the men did collect the tolls, and got, I do not say a large substantial sum, but got an appreciable sum of money out of them every year." Then I said, "Ten shillings, was it not?" (It is reported as, "A few shillings," but it should be "Ten shillings, was it not?") and you say: "No; the evidence was, that approaching the time when he served his originating notice, the tolls fell off, they were not collected; but whether they were not collected because he did not choose to collect them, or whether they were not collected because they were not collectable, we could not tell; what we had before us was that they were let, that they were in the lease, that they were a distinct subject-matter, that they were not agricultural; that they were separately valued; and whether it is big or whether it is little, the case does not raise the point that if there is one separable, substantial, portion of the subject-matter that is not agricultural or pastoral in character, and that cannot have that character attributed to it, we cannot deal with it"?—That is a plain misprint, the case "does" raise the point, not "does not" raise the point.

3164. That is not my point; I find from 27 "Irish Law Times" Reports the case is given in this way: "The tenant had attempted to collect the tolls; these were formerly valuable, but he could not obtain more than 8*s.* on the last occasion of his attempt to collect. The new fair established in Kilkenny city had had the effect of making the Freshford fairs very small. During the last 20 years the tenant had not succeeded in getting at any one fair more than 10*s.*"?—I do not know where those facts were got from, but the particular facts of the case appearing before us are, I think, in the authorised Report. I rather think Wall *v.* Eyre is reported in the Court of Appeal. I am not quite certain.

Mr. *T. M. Healy*—continued.

3165. This is from the "Irish Law Times" Reports?—I do not know where those facts come from, but at the end of Question 3097 I said: "Whether he had done that wilfully, or whether he had not, I do not for a moment suggest, because I do not think it would have made the least difference, even if he had been able to prove that these tolls could not have been collected; we could not wipe them out of the lease, nor out of the valuation." I might repeat again that the principle of the decision was, that if there was a distinct, appreciable, part of the holding that was not agricultural or pastoral, there was no jurisdiction to fix a fair rent upon that, and inasmuch as the Act recognises but one holding, between one landlord and one tenant, and under one contract of tenancy, we could not bring into the Act anything that was outside it; and being unable to divide the holding or apportion the rent, we decided that the whole was outside the Act. That may be the fault of the Act, or the fault of the Court; but that is the principle.

Chairman.

3166. I understand you to say that the report in the "Irish Law Times" is inaccurate?—I do not say that. I cannot give you the facts of those 202 cases; I cannot (no human being could) carry them all in my mind; I give you the grounds of the decision, and I try to give you the outline of the facts, or a summary. This is a very good instance, I could not give you a better one, of the impossibility of attempting to state the substance of a case. At 3012 I may have misled the Committee; I said I had been in a minority of one on a demesne land case; that was not Griffin *v.* Taylor. It was long after, in Magner *v.* Hawkes, that the difference arose. The very last question of all is 3124: I was being asked about Watson *v.* Abercorn, and some one asked me the ground of the decision in the Court below.

3167. That is Question 3124, is it not?—That question was asked when the Committee was breaking up. The contention of the tenant was that some money had been paid by his predecessor to the outgoing tenant, and that he had refused to give up a piece of one townland until he got a piece of another in exchange. That was, I presume, the ground of the decision in the Land Commission. We thought in the first instance that it was clearly proved that the landlord had got the land up into his own entire possession, having bought the tenants out, and, as regards the exchange, we did not attach very much weight to the fact that the tenant stood out against being moved from one place to another

Chairman—continued.

on an estate where there was some evidence that the tenants had always been well treated. I may say that the case was heard by a Court of four, including the Master of the Rolls, who has more knowledge of the North of Ireland than any one of us, and each and every one of the judges in giving judgment said that he thought on the facts it was a perfectly plain case. That is the last.

3168. Now we will go on to new ground. You left off with a consideration of the demesne cases. We now come to the rather troublesome ground of town parks. The especial question as to town parks, so far as we can judge from the evidence already before us, is: What is a town?—That is only one question.

3169. That is the first special question?—To understand the difficulties about the town parks I have to ask the Committee to go back to the definition in the original Act of 1881, Section 58, Sub-section 2. It is an artificial definition. I cannot make these cases clear at all until I first make clear what the definition is; "any holding ordinarily termed 'town parks,' adjoining or near to any city or town, which bears an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and is in the occupation of a person living in such city or town, or the suburbs thereof." That is the original definition; it is amended afterwards, and the cases on the amending Act of 1887 are quite distinct from those on the original Act of 1881. There must be three conditions concurring to make a statutory town park: No. 1, "A holding ordinarily termed town parks adjoining or near to any city or town." No. 2, it must bear "an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm;" and No. 3, it must be "in the occupation of a person living in such city or town, or the suburbs thereof." When you come to the amending Act (which I want to keep for the present separate), you will find the development of the town and the accommodation of the inhabitants are mentioned for the first time.

Mr. *T. W. Russell.*

3170. The Act of 1887?—The Act of 1887; but I want to keep them separate.

Chairman.

3171. Section 9?—This definition does not exclude from the Act town parks in the natural sense if they are occupied by people who do not live in the town. I hope I make that clear, because a great deal turns upon it.

3172. Yes; very well?—You have not only the character of the holding to look to, but you must also find that it is in the occupation of a townsman, and therefore when you use the words "town parks" in dealing with these cases you are constantly liable to the confusion of speaking of a town park in character, when what the Court means is a town park excluded from the Act. They are quite distinct. A town park, to be put out of the Act, and to be within the exception, must be a town park of which the tenant lives in the town. The second condition has again a curious limitation in its application. The holding is to bear an increased value as

Chairman—continued.

accommodation land; that is not that it is let at a higher rent; for example, in Killeen *v.* Lambert, some of the town parks that were excluded were held at low rents, but they bore "increased value as accommodation land," as was proved by the fact that adjoining land held by butchers and other people in the town was let at a much higher rent. I have no right to speculate on the object of a provision, but apparently the desire was to exclude the land round the town that had a demand upon it for the accommodation of the inhabitants. The main point is this—and I want to make that clear—that the question of town park does not depend upon the amount of rent; it depends upon the land bearing a specific additional value of a particular kind.

3173. You have said that it depends upon residence, for one thing?—Residence of the tenant—that is one condition—I gave you the three.

3174. I was going to say upon that point of residence: Have you had any questions raised as to what constitutes residence?—We have certainly, and I will come to them afterwards; but I want just (if you will kindly allow me; I think it will be the shortest way) once and for all to get this definition clear.

3175. Very well?—Now this increased value is increased value as accommodation land. I understand proximity value to be a value that attaches just as much to a farm as to land used for anything else. Proximity value is the additional value that land gets from being near a town, because, in the first place, there is a better market for its produce; and, in the second place, there are greater facilities for its cultivation, in the way of getting manure, providing labour, and so forth; but whether it is a town park, or whether it is not, it seems to me that its ordinary letting value as a farm includes its proximity value; therefore this section provides that what is to be proved is "increased value as accommodation land." Now that is not proximity value. The meaning that I understand that to bear is this: that it is value, over and above the proximity value, arising from the demand for land of that character by a particular class of persons; in other words, it is value arising from demand, if we go back to political economy, if it is not gone to the planets.

Mr. *T. W. Russell.*

3176. Do not mention it in connection with the Irish Land Acts, please?—I am really trying to explain, Mr. Russell, a rather complicated subject. There is a particular class of customers that raise the price of the land by looking for it. That has nothing to do with proximity value, except so far as those people are customers who live in the town; therefore, carrying it on, proximity value is value because the land is near a town; accommodation value is a further value because there is a particular class of demand for the land; and then, lastly, the excluded town park is to be in the occupation of a person living in the city or town, or its suburbs. Those three conditions must coexist to throw a town park out of the Act; and having said so much, I now just say, generally, that every branch of that definition has been

Mr. *T. W. Russell*—continued.

been the subject of several cases; and, further, it has been the subject of an amending Act; I can give you the cases, and give you the questions.

Chairman.

3177. I think that, perhaps, makes very clear to the Committee the view you take; but as to the qualifications, as to the nature of residence in the suburbs, what do you say?—I will take whichever of those questions, sir, you think most convenient.

3178. On the nature of residence, what point has been raised there?—A very singular case has recently arisen on that question of residence. First there is an important point on the date: "is in the occupation of a person living in the town"; when must he live in the town? That arose in a case of Nelson *v.* Headfort, in which there was a difference of opinion. It was contended for the landlord that the tenant is excluded if he lives in the town when he serves his originating notice, or if he lived in the town at the passing of the Act. It was contended for the tenant: "No, if I don't live in the town when I serve my notice, my town park is not excepted." The case was argued with great acuteness, and in the end Lord Justice Naish was of opinion that unless he lived in the town when he served his notice he would not be out of the Act. We came to the conclusion that if the status of town park had attached to the holding by the tenant's being a man living in the town when the Act passed, his going out of it afterwards would not put him into the Act. *E converso:* that if the town park in the natural sense was in the occupation of a person who lived outside the town when the Act passed, it could not be thrown into the exception by the tenant's coming afterwards to live in the town; and it was illustrated by, what anyone would see, the extraordinary consequences; if we took the originating notice as the date which decided the town park, tenants could go out into the country for a while, fix their rents, and come back again; if, on the other hand, farmers outside came in, or the holdings devolved on townsmen, the result would be the opposite; but that construction, I mean our construction, was adopted in the amending Act; and, as I understand the amending Act, it really carries out and ratifies the principle of Nelson *v.* Headfort, but makes it clear that subsequent changes backwards and forwards are not to affect the question.

3179. Now, what other condition is there besides date?—The next case was a case upon which you seem not to have had full information, the case of Martin *v.* Annesley. In Martin *v.* Annesley the holding was an undoubted natural town park; it was a field used with a house in Newcastle, the house being held under one tenancy and the field held under another. It was a field adjoining the house, of an agricultural character, within 300 yards of the town of Newcastle, which is a watering-place in the County Down. House and field were occupied, and the house was lived in, by a tenant named Martin, who was the predecessor of the man before the Court, and he died the owner and occupier of both,

Chairman—continued.

before the Land Act. The house was a furnished house, and you will find that important afterwards. The tenant Martin, who was before the Court, was his personal representative; he went into possession of the house and field, but he let the house to a lady, who first came there to reside before 1878. He went in as personal representative, and an administration suit was brought against him before the Vice Chancellor to make him account for the property of the deceased Martin, which included the house, the furniture, and the field. He had made away with the property; he was ordered to give an account, and he could not; and he was sent to gaol. According to my note he was sent to gaol some time in 1878. A sequestrator was appointed who took possession of all his property; he sold all the furniture out of the house, and he made what he could of the house and the land; but at the crucial date in 1881 the house was empty. You seem to have heard of a wife and children. The point of the case was that every stick of furniture had been sold out of the house, and it was absolutely empty in 1881, having been left empty when the lady who took it had gone away. It remained empty, I think, until the following year (1882), and then it was let again to a tenant, but the land all through was kept in possession of the sequestrator. Unfortunately the tenant went out of his mind (apparently his dealings with the property may have contributed to that), and he was sent to the Downpatrick Lunatic Asylum very shortly after 1878, and he has been there for the last 12 years. The sequestrator representing him served an originating notice to fix a fair rent, and the landlord argued it in this way (he failed, but he argued it): "If you, sequestrator, are in possession for the purpose of serving me with an originating notice, I am entitled to hold you to have been living in the place." The sequestrator said, "I was not living in the place, it was empty." The landlord said, "The place is in your legal occupation"; and we had to determine whether "living in the town" meant having an empty house in the town. There was great confusion about how the house had been used in 1880, 1881, and 1882. I observe an expression used that we went into "minutiæ." You will kindly observe we have to hear everybody, and this was the case that was made. The upshot of it all was, having regard to the fact that the previous unfortunate lunatic, when he had his senses, had let this house to a tenant, and that his sequestrator subsequently let it to tenants, that it was not a house that he lived in at all. We had not a shadow of evidence that he ever had lived in it after the death of the previous tenant whom he represented, and into the possession of whose property he had got, I do not say illegally, but under circumstances that made him personally answerable. We affirmed the decision of the Land Commission, that there was no evidence that the tenant was living in the town; we decided the case in favour of the tenant, but the landlord stating that he thought he might get evidence to prove that the sequestrator had been personally dealing with the place in 1881, 13 years ago, we withheld the order until the 1st of June (this very day), on condition that if the landlord could get any further evidence

Chairman—continued.

he might bring it forward, on affidavit, as to the user of the place in 1881. The Registrar told me, last week, no further evidence was given, and, therefore, I presume, by the time I am sitting here the order has been finally affirmed.

Mr. *M'Cartan.*

3180. There was no question raised in that case, was there, as to whether it was a village, a hamlet, or a town?—None whatever, in that case. We have had that question raised in other cases; but you asked me, you will remember, for cases in which the question of residence had arisen, and I am giving you them in order.

Chairman.

3181. Now, on the word "suburbs"?—We have had two cases on that. One did not come from the Land Court; the other did.

3182. I thought all the cases came from the Land Commission?—No; one was an appeal from the Queen's Bench.

3183. Then this is not one of your 202 cases?—This is not one of my 202 cases. You will observe that the words are, "living in such city or town, or the suburbs thereof."

3184. Yes?—The first case that arose on that was the case of Rossmore *v.* Donnelly.

3185. We have had the general facts of the case?—Then I may put it shortly: We were satisfied that, having regard to the size of Monaghan, which was the town, the residence of the bishop was not in the suburbs. As a matter of fact, the bishop's residence was a little beyond his cathedral. There was a very angry dispute in the case in consequence of the refusal of the Land Commission to allow an appeal; I do not say the refusal was wrong, but there was a strong controversy in the case in consequence of a refusal to give the appeal, and an undertaking to give a case stated, if any question of law could be developed; but when the case came before us we stopped counsel on the question of "suburbs," because it so happened that all the three judges who were hearing the case were perfectly familiar with the bishop's residence; we had all been in it; I had myself been in the very fields that were in dispute; the fields were nearer to the town than the residence, and I thought it was admitted, at all events it was assumed in the argument, that they were land that bore an additional value as accommodation land. We did not go into that point; we said: The bishop's residence is not in the suburbs because of the size of the town, the nature of the place, and the distance. We had to judge of all those things. Then the next case arose in Dundalk. This is one of our solicitor tenants, of whom we have had several.

Mr. *T. W. Russell.*

3186. We have also had the facts of that case?—This case turned on the facts.

Colonel *Waring.*

3187. Can you name the case?—Caruth *v.* McMahon. It was decided on the 2nd February of this year. The population of Dundalk was

Colonel *Waring*—continued.

12,449. The holding was two fields used as accommodation land. I think they were actually adjoining the municipal boundary, a great deal nearer to the town than where the tenant lived, and undoubtedly bearing an additional value as accommodation land. Those facts were found by the Sub-Commission and also by the Head Commission, and we did not go much into them. Mr. McMahon is a well-known solicitor in Dundalk; he had his residence not near the holding but about a quarter-of-a-mile off, and about half-a-mile outside the town beyond the railway station. The position of the poor-house, which was beyond him, and other places that were round about were all considered, and I remember well my brother, Lord Justice Barry, quoting the poet Cowper for the suburban residence, "with the three mile stone at the gate," to show how far, according to the ordinary meaning, "suburbs" might extend. We thought that with a solicitor walking in and out every day to his business, the surroundings, the poor-house, and the station, and the rest of it, anybody in the street would have called that a suburban residence; and having come to that conclusion, we held that Mr. McMahon lived in the suburbs of Dundalk, and as he lived in the suburbs, and the other facts were all against him, he was ruled out of the Act.

Mr. *T. M. Healy.*

3188. Was the term "residential fringe" used?—"Residential fringe," I dare say, may have been used. There was a great controversy over a *dictum* of the Sub-Commissioner, in which he attempted to define "suburbs" as places which were to be reached by continuous lines of houses. There is no doubt the foundation of all this town park exception is the existence of a region round the town which bears an additional value, and you may call it "fringe" or "zone"; that idea is at the bottom of it all, as I have shown you already, on the question of accommodation value.

Chairman.

3189. Now, on the point as to what is a town?—Before we come to that, perhaps it will be better to finish this point about the value, as I am on it.

3190. No, go on, if you please, in your own way?—I had better give all the towns that I know of that we have had in the Court of Appeal.

Mr. *T. W. Russell.*

3191. Will you tell us the names of the towns, all of them?—Claremorris, Aughnaclog, Kilkenny, Kells, Carlingford, Strokestown, Ballinahinch in the County of Down, Downpatrick, Bushmills, Rathdowney, Dunmanway, Ennis, Dublin, Dundalk, Newcastle County Down, and Caledon.

Mr. *Sexton.*

3192. Were those all held to be towns?—I think all those were held to be towns. The point of what was a town has never been seriously controverted

Mr. *Sexton*—continued.

verted in our Court until the Caledon case. There were cases before judges on circuit, and I believe there have been cases before the Land Commission also, in which the population test appeared to have been used, if not as an exclusive test, at least as a leading test.

Chairman.

3193. This is a very important branch, and I wonder whether it would not be sufficient if you were to state the principle established by a series of cases, and simply give us a reference to the name of the case?—Very well, I will do that.

Mr. *T. W. Russell.*

3194. Could you tell us what the law with regard to town parks was, the old law, before 1887, as decided by Mr. Justice Lawson, and then go on and tell us how the law has either been narrowed or extended by the Act of 1887?—If you mean by the Act, I was coming to that subsequently; but if you mean by the decisions, that is another matter.

Chairman.

3195. My suggestion is this: would it not be sufficient for you to state the principle established by a series of cases, and give a reference to the cases?—There is no distinction whatever that I know of between the law of 1881 and now, upon the question of what is a town, so far as the Court of Appeal is concerned.

Mr. *T. M. Healy.*

3196. 1881?—1881, as regards what is a town.

Mr. *T. W. Russell.*

3197. Well, I do not like to interpolate any question, because it is not my time?—I do not quite understand your question.

3198. For example, did not Judge Lawson under the Act of 1870, which had the same definition of town parks as 1881, hold that Newmarket, County Cork, with a population of 765, was not considerable enough to be a town?—I cannot tell you about any particular case of figures, but I can tell you this, that the population test is stated in reported cases to have been taken as a definite test in other courts. I cannot (and with all respect must decline, because I am incapable of doing it) discuss whether these tests were right or whether they were wrong in particular cases, not having all the facts before me.

3199. I am not discussing that, but it is the fact?—I have no doubt there are cases which appear to show that the population test was taken as conclusive by some Judges before the question came into the Court of Appeal; but the population test was never taken as decisive by the Court of Appeal.

Chairman.

3200. Tell us, will you; I think this will be the shortest way of getting at it; what test or tests have been taken in the Court of Appeal?—I will.

3201. Not going through all the cases in detail, which would take a very long time, of which we

Chairman—continued.

have not too much, but giving us the tests and a reference to the names of the cases?—The population test before the question came into the Court of Appeal had got to this, that there were cases appearing to show that something between 500 and 600 was not a town; that something between 700 and 800 was.

Mr. *T. W. Russell.*

3202. Newmarket was 765, and was ruled not to be a town by Judge Lawson?—Carlingford is one I have mentioned already with a population of 727; and there was a case, Sheehy *v.* McGowan, decided in the Court of Appeal on Carlingford, holding land to be a town park, so far back as 1887.

3203. Is not Killeen *v.* Lambert the case?—Killeen *v.* Lambert was at Claremorris, and I believe the population was over 1,200. What we have taken as a test is: Is the place, in popular language, a town, and being in popular language a town, is it proved by the landlord, on whom the onus lies, that the land in question, the particular holding, bears an increased value, because there is an accommodation demand by townsmen for it? Now, you will see how that works. There is a complete mistake, I think, in a question where the words occur "any assemblage of houses is sufficient"; that is not a full quotation from the judgment.

3204. That was never said here, I think?—I have it here in the evidence.

Chairman.

3205. Is it not desirable to avoid going into controversy, and would not an exposition of the views and tests of the Court of Appeal be more satisfactory to us?—I will put it in this way: We never decided that any assemblage of houses and people would constitute a town; but, any assemblage of houses and people *larger than a village.* That is a quotation from Johnson's Dictionary. Where there was such "a demand for accommodation land" that there was a rise of value because there were people living in the place who wanted accommodation land, we held that to be evidence that the place was so considerable as to be a town; in other words, the two things are correlative. If there is an assemblage of houses to begin with, larger than a village, if we find that the inhabitants of that assemblage of houses have raised the value of the particular holding by demanding additional accommodation land, then, and then only, it is a town park. But the population test alone is most fallacious. We do not leave it out at all; we take it into consideration, but if it was taken exclusively, it would be most fallacious. There are many towns the inhabitants of which hardly want accommodation land at all; it may be a spread-out place, where every man has as much land as he wants for his own needs, and so forth, but there are many towns, of smaller population, where there are fairs and markets which bring congregations of people and cattle, and in such cases what we require is evidence that the value of the land is raised by a demand on the part of people living in the town for accommodation land. I do not think I can put it clearer than that.

3206. But

Mr. *T. W. Russell.*

3206. But just listen to how Mr. Justice Bewley has construed this decision of the Court of Appeal, which you are describing to us, and then you will see. This is Fivemiletown in my own constituency; I have a very vital interest in this. Now, Mr. Justice Bewley, construing your decision, states this in the Fivemiletown case. "The Court of Appeal appear to have laid down in Caledon *v.* Archer that if there was an assemblage of houses of such a character, that there was a demand for accommodation land by the inhabitants, whether the place be strictly speaking a town, a village, or a hamlet, it was to be considered a town for the purposes of the Act"?—I cannot discuss any construction put on our decisions. I can tell you what our decisions were, and I can tell you distinctly that the expression "assemblage of houses" in our decision was a quotation from Johnson's Dictionary, in which the definition of "town" is "an assemblage of houses larger than a village."

3207. That is how my constituents suffered from your decision?—I wish to say, once for all, that this is a kind of question on which I must, with all respect, ask you to remember what my duties elsewhere are. Any decision of any other court may come before mine; it will be my duty to consider it then. I myself know that many of our decisions to the outside world are not as clear as they are to lawyers, or to ourselves; but it would be very wrong for me to discuss the construction that has been put by anybody, and far less by another judge, upon decisions of my court. I am trying to explain to you what our decisions were; and I would like to give you the case of Caledon *v.* Archer, because I think it very important. I will either go on to Caledon *v.* Archer, or to a case referred to in the evidence already, which will illustrate the meaning of this very clearly. Goodbody *v.* Perry was from the town of Rathdowney, and the question was, "What is accommodation value?" That case raised a very important point bearing on what Mr. Russell seems, in substance, to be anxious to arrive at. Rathdowney has in it a great brewery, or distillery, belonging to Perry and Sons, who are now a limited company. There was a considerable holding of 48 acres of fields lying at the back of the brewery, valued at 32*l.* 10*s.*; but taken at a rent of 90*l.* 18*s.* from Mr. Goodbody, who was a connection of the owners of the brewery. At that time it was a private partnership; it afterwards became a company, and in 1879 Mr. Goodbody granted a new lease to the company, at a rent of 105*l.* 11*s.* 1*d.*, of these 48 acres. The case was heard by a Sub-Commission, presided over by Mr. Doyle, who had been first a barrister, then a lay Sub-Commissioner, and then a legal Sub-Commissioner, and whose judgment weighed with us.

Chairman.

3208. We understand all about Mr. Doyle; we have had him before us?—He had found that these fields were of great value to the brewery, for the accommodation of the brewery, but that their value arose from their position towards the brewery; they lay at the back and along the river, and some little bit away from the immediate street of the town; he found that there was no increased

Chairman—continued.

value to be put upon them as accommodation land by reason of any general demand on the part of the inhabitants, as distinguished from a demand by the brewery which wanted the land badly. That finding was affirmed by the Head Commission; it came before us, and we affirmed it also, laying down the principle that the thing to be proved is not that the particular holding to the particular tenant bears an increased value; but that it bears an increased value as accommodation land for the inhabitants of the town generally, and, therefore, I think it helps, for the point that I am on, to show you that there must be such a body of inhabitants as to raise the price of land, in order to have a town park at all; and, in that case, although I for one thought (if we were at liberty to think of such a thing) it an extremely hard case on the landlord, and not at all within the real intention of the Land Acts. We held that the landlord had failed to prove increased accommodation value, and that therefore that holding was not an excepted town park. Mr. Justice Bewley had attached great importance to the size of it, but we did not attach much importance to the mere size of it, because some of the fields were quite close up to the town and actually at the back of the brewery itself. Now I will come, if you please, to the Caledon case.

3209. Are you going through all these towns?—No; you asked me to give you the leading ones. I have them all here. If it is all the same to you, I will give you as few as I can, and any you ask for.

Mr. *T. W. Russell.*

3210. Caledon you will give us?—Yes.

3211. That is the governing case?—The governing fact in the Caledon case, to my mind, was, that the pink paper, according to my recollection, showed that the Sub-Commissioners had added a very large amount (whether it was 33 per cent. or 50 per cent, I do not remember) for what they called "proximity value;" and if you bear in mind the real distinction between proximity value (which ought to attach alike to land in the hands of a farmer and land in the hands of another person) and accommodation value, I for one, using my faculties as best I could, came to the conclusion that what they were calling "proximity value" was value that arose from the demand for accommodation land. It was very strongly stated in evidence that there was increased value from accommodation land, and there were also circumstances, such as that on the Caledon estate they had kept a separate mode of dealing as town parks with certain fields round about the town, which included the particular holding in the particular case. The holding was a small holding of four acres three roods and 17 perches; the rent was 9*l.*; the valuation was 7*l.* 10*s.*; it was a market town; there were shopkeepers in it, and deciding the case as best we could, we came to the conclusion that the additional accommodation value was proved, that Caledon was an assemblage of houses larger than a village, and that the case was out of the Act.

Mr. *Sexton.*

3212. Did you in that or in any other case define "accommodation land" and "accommodation

Mr. *Sexton*—continued.

tion value"?—Accommodation value, yes, to the extent I have mentioned, that it is additional value depending on the demand of the inhabitants of a town for land for use in connection with their own residences. I have mentioned, and I think my brother judges have not differed with it, that "accommodation" means "use with the residence in the town as one establishment."

The *Solicitor General.*

3213. Will you allow me to ask you a question in refereuce to what is said in "Cherry" about it; Cherry says, on page 330, "As to the first condition" (that is about its being a town) "there has been no express judicial decision defining in general terms what is to be considered 'a town'"; I gather you have really had to apply the question of fact in each case?—Certainly.

3214. And is not this the fact, that the elements of consideration, or perhaps the governing elements, have been of course first, one element, population, and another element, the fact, the presence or absence of accommodation value in the land in consequence?—If it were such a thing as half-a-dozen houses gathered together, a mere palpable village or hamlet, I take it, we would not go any further at all; but where it becomes a question of whether it is more than a village and is a town, in determining that question we look to see whether the value of land has been raised by a demand on the part of the inhabitants, and if the number of inhabitants is sufficient to raise the value of the land, that would appear to be an element to be taken into account in determining whether the population is sufficient to be called a town, as distinguished from a village; but every individual case must be decided on its own facts, on questions of this kind.

Mr. *T. M. Healy.*

3215. Was not the word "place" constantly used in that case by one of the judges?—I cannot tell you if the word "place" was used, but if the word "place" was used, it must have been used to avoid begging the question of "city or town." I am personally unconscious of ever having forgotten for a moment that the thing that was to be discovered was a town.

The *Solicitor General.*

3216. Practically, what you have looked for, I suppose, is whether, so to speak, a man in the street would call it a town or not, and in looking for that, you regarded this element, and you have treated it as a popular expression, not an Act of Parliament expression?—There is many a man in the street, in Ireland, who would call a piece of land a town; but we did not look to him, we looked to Sam Johnson, and you will find the actual definition used there. What we have looked to first is: Is there anything which in the ordinary meaning of language to educated men is fairly to be called a town, and if it is fairly to be called a town, the landlord has to go further, and he has to prove that the particular piece of land has its value raised by a demand on the part of the inhabitants of that place (and now I use the word "place" because I do not want to beg the question), whether the inhabitants of the place are sufficiently numerous to raise the value of the land.

The *Solicitor General*—continued.

Mr. *T. W. Russell.*

3217. This is the last question I will ask you upon the point, and I hope the Chairman will excuse me, seeing that Caledon is again a place in my constituency: Is this a fair statement of the case (I am quoting now from the judgment of the Lord Chief Baron). "When it clearly appears that there is a subject matter that answers the description of 'town' in its ordinary sense, an assemblage of houses, and you find that assemblage of houses is of such a character that it increases the value of the land that is near them, because of their being used as accommodation land, the moment that increased value arises the land becomes town parks within the meaning of Section 58 of the Act of 1881; and whether for some purpose or not you would call a place a village; an assemblage of houses becomes a town for the purposes of the Act; in other words the Court of Appeal has swept away the population test. Is not that so?—It is certainly not so. The Court of Appeal has not swept away the population test, because the population test must always come into the question of whether an assemblage of houses is a town or not. Neither the Court of Appeal nor anybody else would call an assemblage of houses in which 20 or 30 people lived a town. The first portion of the passage you have read (I do not know whether it is a revised judgment or not, and again I must be pardoned for not discussing other people's expressions), puts, it seems to me, exactly what I have been trying to put, that on the question of whether or not an assemblage of houses is, or is not, a town, the element of whether the inhabitants are numerous enough to raise the value of the land round it by wanting it for their accommodation comes in as an element, but both branches react upon each other.

Chairman.

3218. You regard the population simply from the point of view of raising the value?—Not simply raising the value; you cannot cut the thing up; it is a compound question. The number must be sufficient to justify calling them townspeople, and the effect of their demand must be such that additional accommodation value is created for the land; if those two things co-exist, we hold it a town.

3219. In other words the number must be sufficient to impart an additional value to the outlying land?—Certainly, but it does not follow that because the number is sufficient to impart additional value to a field or two, therefore the thing is a town. You might have four or five houses together, and there would be some fields close to them, and those fields would be to the inhabitants of those houses worth a great deal more than to anyone else, but we never would hold that a town for that reason only. It is a compound question.

Mr. *Sexton.*

3220. Although the accommodation value was created?—Although the accommodation value was created. I have given the case of Goodbody *v.* Perry, where there was a very much increased accommodation

Mr. *Sexton*—continued.

accommodation value created for a particular tenant living in an undoubted town, yet that was not enough. I hope I am not repeating it too often; you must have a value increased by a demand of such a number of people living together as fairly may be called townspeople, for land to be used in a particular way, namely, used as accomodation land in connection with their residences, in a place that will fairly answer the description of a "town." Beyond that we have not gone; and that question must be answered in each case on the consideration of the whole thing, and not by the population test alone. To that extent we have not swept away, but we have put the population test into its proper place, as only one element in a great number. We are of opinion, and we have said so, that anyone who tries to determine the question by population alone will bring himself into the absurd position in the end, of having 600 or 700 on one side of the line, and 650 or 750 on the other.

Chairman.

3221. It would seem that one consequence follows from what you have said, and not an unimportant one. I may be wrong, but does it not follow from what you have said, that in each case the Courts below you, the Sub-Commissioners, and the Chief Land Commission, must decide for themselves upon the merits of the case; and, with reference to particular facts of the case, that they do not derive from any judgment of the Court of Appeal, a principle so clear and so wide, as in effect, to illuminate their path?—On that point of principle I would wish to say this. The Court of Appeal has never hesitated to lay down to the best of their ability every principle of law involved in any case that has come before them. We have had a great many of them, and I am unaware of any case in which the principle has not been decided where it arose; but there is a principle, and a principle of law, that we have laid down again and again, and that is, that where the decision of any particular case rests on the facts of that case, you must not lay down a general principle by which one man's facts will govern another man's rights; and again and again we have been obliged to emphasise that, in consequence of the tendency continually existing to try to get a ready-made easy arithmetic by which people's rights are to be decided in different cases on general principles, where those general principles are not principles of law, but are principles of fact. Now I ask you to allow me to give you two instances. Very early in our business we had some town park cases in which Mr. Givan was the landlord. I think there were five tenants, and all five cases were dismissed. The town was Auchnacloy, one coming rather near the line of whether it is a town or not. We went into each case, and we thought the increased accommodation value was proved in three of the cases and was not proved in two; in the three where it was proved we held that they were excepted town parks; in the two where it was not proved we held that they were not. That is an early instance. I will also give you the latest. We had a case the other day in which a number of cases were all decided together against the tenant; Stewart *v.*

Chairman—continued.

Davidson is the name of the case; I have not got the town; but there one tenant had picked up (not an unusual thing with townspeople in Ireland) a number of little holdings round about the town, and he served originating notices to fix a fair rent upon them. The tenant was an undoubted townsman, and several of the holdings were undoubted town parks within the exception in the Act of 1881. The question arose on the words "ordinary agricultural farm," in the Act of 1887; but I am now illustrating this matter of principle. We found in two of the cases that the land was stocked, meadowed or cropped, and we held that these had been let and used as ordinary agricultural farms, although only fields. There was a mill, I think, on one of the other holdings; there was a quarry on another; and there was a brick-field on a third; but we insisted on counsel going through them one by one, with the result that we picked out those where the land was let and used as an ordinary agricultural farm, and we affirmed the decision in those where it was not so. I give you those two cases on the matter about which you have asked me, not so much because of their importance, but because they show you the impossibility of deciding one case by another, on a question of fact.

3222. May we take it that what you lay down is this: that you do not leave the Courts below without a guiding principle in any case which allows a guiding principle to be stated; but that on the other hand, in other cases, the most vital principle in your mind is that one case cannot govern another where decisions depend upon facts, and where the facts are not identical?—That is precisely it; but at the same time, each instance does give some assistance, though laying down no general principle.

3223. It helps to localise the thing?—Yes, you want to find a line; there must be cases on each side of it; every individual case that you fix on either side of that line, tends to give you what a mathematician would call the "locus" of the line; but you cannot draw the line beforehand so as to know upon which side of it any particular case will fall. I have been specially asked to mention to the Committee (by one of my colleagues, who has insisted on this very frequently) an illustration from the cases where reasonable skill is the question. An action is brought against a surgeon for want of reasonable skill; or a railway company are sought to be made answerable for want of reasonable care; in every case of that kind, every circumstance in the case must be taken into account, and Lord Halsbury (I think it is) has laid down that it is an unprofitable inquiry to discuss the facts of one case in another case, where the facts are different, and the decision depends on a question of fact. To that extent (and I emphatically state to that extent only) the Court of Appeal has refused to lay down principles in these land cases. You asked me the question, but it applies more directly, and arises more strongly, on the pasture cases than it does on any other, for a reason which I will mention when we come to that part of the Act.

3224. We may take it, I think, now, that you have said all that you think it worth while to say to the Committee on the question of town parks?—

Chairman—continued.

parks?—I have, up to the present, been entirely on the Act of 1881; there is still the Act of 1887.

3225. That is Section 9?—Yes.

3226. That is the distinction between a holding let and used as an ordinary agricultural farm at ordinary value, and so on?—Yes.

Mr. *Sexton.*

3227. May I ask you whether, in your understanding of the term "accommodation land" or "accommodation value," you take any necessary account of the use of the land, whether agricultural or other; or whether you only consider that the inhabitants of the town or place (for whatever reason), have caused a higher value to be attached to the land for every use?—The use of the land is always taken into account; but I have again to remind you of what I explained on Tuesday last, that the curious condition of all these questions is, that you have to begin with a holding that is admitted to be agricultural or pastoral. You will observe there would be nothing at all for the exception to operate upon until you first have an agricultural or pastoral holding; therefore, whether you are speaking of town parks, or whether you are speaking of demesne land, the question never arises except in connection with a holding which is agricultural or pastoral in its character; for I have already told you, and it is the guiding principle through all these decisions, that the tenant must first show that his holding is agricultural or pastoral.

3228. In its character?—In its character; and, therefore, you observe that every town park on which the question arises at all, must be first held, or admitted, to be a holding agricultural or pastoral in its character. Accordingly, we cannot say: "This is no town park, because it is agricultural." The "user" has been gone into with the most extreme minuteness. Again, we go into details such as whether the tenant kept post horses and grew oats that he gave to the post horses; or whether he was keeping cows, and producing milk and butter, for his own family. The accommodation use is very material, and, I may say, that it is infinite in its variety.

Chairman.

3229. Now, about the Act of 1887?—We have had several cases on this, and you will see at once when you read the Act, how it arises. To show you the labyrinth we get into, take this, the tenant has first to show a holding agricultural or pastoral in its character. The landlord has then to show a town park, with accommodation value, in the possession of a man living in the town. Then the tenant may come again and proceed to show an exception on that exception, because this 9th Section is an exception out of the exception that is in the 1881 Act. It is not an unworkable system of legislation, but it is complicated. Section 9 says, "A holding shall not be deemed to constitute a town park, though within the definition of the expression 'town park' in Section 58 of the Land Law (Ireland) Act, 1881, if it is let and used as an ordinary agricultural farm." That is to say, the definition being what I have already told you, a piece of land having an additional value as accommodation land, in the hands of a tenant living in the town, shall nevertheless have a fair rent fixed upon it, if it has been let and used as an ordinary agricultural farm. There is a contrast between the words "ordinary agricultural farm" (which is marked by what Mr. Russell mentioned on Tuesday last) with "ordinary farm," or "ordinary land," mentioned in the previous Act, and therefore, emphasis is apparently pointed to the word "agricultural." Now the cases we have had upon that have been puzzling enough, but we found our way through them. At Ennis, in the case of McNamara *v.* McNamara, a solicitor who is well known to us all took a piece of land, actually, I may say, in the town of Ennis; it had previously been occupied by a man who carried on business in the town, and he farmed it in a very curious way. He let it out on what we call "conacre," to the townspeople in alternate years, by which he got them to till it and to manure it.

Chairman—continued.

3230. I think we have had the facts stated already as to that?—We held that it was neither agricultural, nor ordinary, nor a farm. We reversed the Land Commission, and said that we would not fix a rent in McNamara *v.* McNamara. In the Davidson *v.* Stewart case, which I have mentioned already, in which the two or three holdings were dismissed, some were used as brickfields, and uses of that kind, and the last case (I think I told you I would give you the last case) was the case of Murphy *v.* Harrington, I think, where the land had been meadowed for 15 years.

3231. I thought Davidson *v.* Stewart was the last?—No, Davidson *v.* Stewart I have given you already, but Murphy *v.* Harrington was a case where the land had been, for 15 years, meadowed, and the evidence was that it had never been tilled, and, resting on the introduction of "agricultural," and the contrast of that term with "pastoral," we held that that was not an ordinary agricultural farm. I am told that the word is put in on high legal authority. We held that it had its effect, and that a grass town park was not within the exception from the exception from the Act.

Mr. *T. W. Russell.*

3232. It narrowed it?—The exception did not extend to it. We had also an important case, Daly *v.* Wright, in Dunmanway, in which the same point arose. The question in these cases always is (you will understand it is still a question of pure fact): Is the thing which is already within the Act of 1881 taken out of the Act of 1881 by having been both let and used as an ordinary agricultural farm. And there is a very narrowing, and, I think, a very justly narrowing, provision that it must be both let and used; that is, that the landlord's intention, as it were, comes into the question of letting it out, once it is proved to be a town park. Now the last clause also is important as an indication of the meaning of this exception: "Without substantially interfering with the improvement or development of the city or town to which it belongs, or the accommodation of the inhabitants thereof." I have already pointed out to you that, in consequence of the curious mixture of

Mr. *T. W. Russell*—continued.

condition of tenant's residence, and character of the land, the development of the town may be just as much cut up under the Act as it stands, as if it was not considered at all; because if the tenant lives outside, his town park may interfere as much as ever it likes with the development of the town, yet he must have his rent fixed. And there is not to be found in the legislation what one might have expected, some provision that land of a defined character, namely, land that is likely to be wanted for the accommodation of the inhabitants, and which if it were fixed with a statutory tenancy would interfere with the development of the town—so to speak, put it in a strait-waistcoat—that that land shall be taken out of the Act; nor on the other hand, is there any definition that the excluded tenants are to be townspeople. Many farmers live in towns, and yet if they live in the town they will be thrown out of the Act, unless they can show that the piece of land that is within the zone has been let and used as an ordinary agricultural farm.

Chairman.

3233. That ends the head or chapter of "town parks"?—Except that you will observe the next two clauses practically adopt the principle of the decision in Nelson *v.* Headfort, but provide against any question being raised as to migration of people from towns backwards and forwards. A lot of cases were put, amongst others this one: A man might take a town park, and then change his residence; either change it in or change it out. We thought the results would be so absurd, that we felt we must attribute to Parliament the intention to fix the character of town park holdings at the date of the Act of 1881. It has its inconveniences, because, as time goes by, it may become more and more difficult to determine whether the character did or did not attach in 1881.

Mr. *Sexton.*

3234. Do you consider at all whether the town is likely to develop?—We do; we have had evidence of that constantly. We are very much dependent upon the valuer's evidence, but as a rule, there are valuers on each side, and we are obliged to look to see what the grounds of their valuation are; it is constantly relied on in argument.

3235. Whether the population has grown?—Even whether the town is moving in one direction or another. Every one of these cases indicates the difficulty and the impossibility of laying down general principles.

Chairman.

3236. We now come to the next sub-head, pasture holdings?—Yes.

Mr. *Sexton.*

3237. No observation has been made about home-farms?—We have really had very few home-farms. Until this Act of Parliament was passed, I am not sure that I ever heard of one. We had one or two home-farms; I will tell you what the principle was upon which we dealt with them. If we were satisfied in fact that the landlord really wanted the house for his own residence, or for that of his own family, he was entitled to get it under the Act; but if he was only taking it up because he wanted some other tenant, or something of that sort, or it was not for his own *bonâ fide* residence, he was not. It turned on the facts of each case; I do not know that there is any doubt about the law.

Mr. *Dillon.*

3238. Do you mean he could take up any man's land?—There are special provisions to that effect, but he must pay compensation. They are in Sections 5 and 21 of 1881. You will remember, of course, that this Act altered people's rights to a large extent, *ex post facto.* There are a number of savings, some for the tenant, some for the landlord; and the idea apparently was that if the landlord wanted a piece of land for himself he might get it on paying compensation; but he could not take up a home-farm under the 21st section, without paying compensation under the 5th.

Chairman.

3239. Now will you proceed to pasture holdings, and give us the definition of the word "pastoral" by the Act of 1881. It is that it should be "used wholly or mainly for the purposes of pasture, and valued under the Acts relating to the valuation of property at an annual value of not less than 50*l.*"?—Here you have, apparently, had a number of cases given to you, and I do not think your attention has been directly drawn to the real difficulty at all. You have to apply these words, "Any holding let to be used wholly or mainly for the purpose of pasture."

3240. "Mainly" is the word. I suppose the word "mainly" has given rise to the difficulty?—Of all words in the Act this is the one that most graphically illustrates what I have been saying about principle, because it is a relative word; it is exactly like "reasonable"; but I may tell you shortly that we have held that "mainly" does not mean merely preponderating; that if you have a thing in two parts, as it were, and that pasture merely preponderates, that is not "mainly." Almost every form of metaphor has been used; a main line and its branches; a predominating purpose; an overshadowing purpose; principal and accessory, dominant and ancillary. You will find all those words used continually, but unless we can find the principle established, it is not held to be "mainly for the purpose of pasture"; but if, on the other hand, the tenant really took the place for the purpose of pasture, as his main purpose, Parliament has declared that he is not within the Act. The only judge I know of who has speculated on the reason for that, is Lord FitzGerald, in the case of Westropp *v.* Elligott, where he appears to have thought that the desire of Parliament was to exclude dairy farmers and graziers from the Act. We know the best land in Ireland is devoted to pasture; Roscommon for sheep, and Meath for cattle; and there are whole regions with nothing but herds' houses on them. It may have been thought that those people were

Chairman—continued.

were able to take care of themselves, or that it was not desirable to crystallise the existing state of affairs by making it impossible to take the land up from them; but, be that as it may, Parliament has not extended the Acts to any holding "let or used" wholly or mainly for the purpose of pasture," with two very extensive limitations.

3241. What are those?—In the first place the exception relates only to lettings valued at or over 50*l.*; and to non-resident holdings, and no pasture case can arise unless you have either a holding valued over 50*l.*, or a tenant who has been laying field to field, so to speak, and who does not live on the grass land; I am no statistician, but I should say that that would limit the operation of this section to a very very small fraction of the holdings of Ireland. It does no doubt include very big ones; grazing farms and dairy farms.

3242. But the number would be limited?—The number would be small, or comparatively small. Sub-section 3 limits it to 50*l.* valuation farms, and Sub-section 4 only extends it to cases where the tenant does not reside "unless" (you will observe also) "such holding adjoins or is ordinarily used with the holding on which such tenant actually resides." If a man has a farm, and he has got pasture fields round about his house, that 4th Sub-section will not do him any harm; if, on the other hand, he has been doing as men often do, taking up detached pieces of grazing land, and putting the dead hand of the grazier upon them, he cannot get into the Act; at least Parliament says he shall not; we have nothing to do with it.

3243. You mentioned, just now, a case of which we have heard a good deal before, Westropp *v.* Elligott; do you want to make any remarks upon it?—I should like to refer you to that case, and to tell you how it arose. This is one of the cases that, having been an action for ejectment, got to the House of Lords, and all our decisions, subsequently, have been more or less affected by it. It is about the most important case I have to deal with in the whole thing, I think. Before Westropp *v.* Elligott there had been a case stated for the Court of Appeal of Fiddis *v.* Montgomery. I have not it on my notes, because it was before 1882. It came, I am almost certain, as a case stated.

3244. Are you now speaking of Montgomery *v.* Fiddis?—Yes. It came before the Court as a question of law, and I confess that the decision seems to have indicated, at least, an opinion that unless the contract of tenancy had something about "pasture" in it, the holding would not be "let for the purpose of pasture," but that was the very point in Westropp *v.* Elligott, and although Fiddis *v.* Montgomery does not seem to have been much argued, it was wrong, and Westropp *v.* Elligott (which binds us) has laid down the right rule as to the purpose of the letting.

Mr. *T. M. Healy.*

3245. O'Brien *v.* White, you mean, do you not?—No, I am not taking them in their order.

Mr. *T. W. Russell.*

3246. Before you go to that case, in Fiddis *v.* Montgomery, did you hold that unless the tenant entered into the obligation to hold as a pasture holding, it would not be let "for the purpose of pasture"?—I do not think it went so far as that; I have not got it for you, because, as I tell you, it came up before 1882; but undoubtedly my recollection of it is that we were of the opinion that there must be something, express or implied, about "pasture" in the contract. You observe that the word is "let" for the purpose of pasture.

Mr. *Sexton.*

3247. Your disposition was to look for the contract?—Yes, and I will go even further, and say, that in Fiddis *v.* Montgomery, an opinion was indicated that unless there was something in the contract to that effect, you could not infer "the purpose of pasture."

Chairman.

3248. Now Westropp *v.* Elligott you come to?—Yes, Westropp *v.* Elligott was heard by Lord Selborne, Lord Blackburn, Lord Watson, and Lord FitzGerald, and while we expect our decisions to be followed by those below us; we must follow the House of Lords.

3249. That was in 1884, was it not?—That was on July 7, 1884. I am not forgetting O'Brien *v.* White; it was not decided by us until December 12, 1884. Lord Blackburn laid down this principle (9, Appeal Cases, page 823). "In the absence of any express terms, the law implies, from the mere relation of landlord and tenant, that it is the duty of the tenant to do or to leave undone some things, and a promise is implied from the mere relation of landlord and tenant on which an action lies for a breach of that duty." He had got O'Brien *v.* White, which had been decided on the 6th February 1884 by Judge O'Hagan, who reversed the Sub-Commission, who held, looking at the place, that it was a pasture holding, and here is what he says: "A case of O'Brien *v.* White before the Land Commission, decided on the 6th of February 1884, was cited, in which the Land Commission, reversing the judgment of the Sub-Commissioner, did say" (here he refers to an argument used on the part of the respondent) "that, unless there was an express covenant in the lease, or, what would come to the same thing, a custom such as would cause a covenant to be tacitly in the lease, so that the tenant could be sued on it if he did not use the land for pasture, it was impossible that the land could be let to be used for the purposes of pasture. As there is no such covenant in the lease, and no evidence of any custom which would cause such a covenant to be tacitly incorporated in the lease, this would, if the argument was well founded, put an end at once to the case." He says that as that case was subject to an appeal, he did not express or form an opinion on the merits of the case, but he says, "I think it right to say that I do not at present assent to the legal principle stated by O'Hagan, J." I am not reading the whole of it, but this is a quotation by Lord Blackburn from Judge O'Hagan, "He says, 'The nature and capacity of the soil and its unsuitability to any other use than pasture, must, it was urged in the case now before us, have been present in the minds of both landlord and tenant at the time of the letting. Very likely it was pre-

Chairman—continued.

sent to their minds, but that it was present to their minds in the sense that it formed part and parcel of the bargain and created a covenant the infringement of which would be a wrong, is what we must be convinced of before we can hold that there is an implied contract.'" That is a quotation from Judge O'Hagan; but Lord Blackburn proceeds: "And both he and Mr. Litton lay it down that the contract being in writing is conclusive as to whether or not there was a contract on which the tenant could be sued, with which I do not quarrel; but they also lay it down that though the lands were of such a nature that they could not in the ordinary course of things be used except for pasture, they could not be held to have been let to be used as pasture unless the court could imply a covenant that they should be used in that and no other way. I do not, as at present advised, agree in this." That is in Lord Blackburn's Judgment. He proceeded to discuss the old Roman law. He gives an example from old French law, "A lease of a house in a village is," he says, "to be taken to be let to be used as a house, and the lessee cannot set up a forge in it, but if it is let to the village blacksmith the presumption would be different." Lord Watson's language is very important: "Whenever the contract fixes, either expressly or by implication, the uses which the tenant is to make of his holding, it must, I apprehend, be conclusive as to the purpose for which the holding is 'let to be used.'" And then he says: "The difficulties which I have felt in considering this appeal only relate to the third and fourth of the cases supposed. In these cases the contract permits the tenant to make any and every possible use of the subject let, so long as he observes the stipulations or local customs applicable to such use, and does not transgress the rules of good husbandry. If the purpose referred to in Section 58 (3) must be an exclusive purpose, prescribed by the contract between the lessor and lessee, it follows that in none of these cases could it be held that the land was let to be used for any particular purpose. In that view a tract of hill country, quite unfit in any ordinary sense to be used for other than grazing purposes, would not, although the tenant never did use, and never dreamt of using it, except for grazing, be a holding let to be used mainly for the purpose of pasture within the meaning of Section 58 (3). There would be nothing in the contract to hinder the tenant from reclaiming the land, and converting it at an enormous cost into an arable farm," or a market garden: "although it might be unreasonable or foolish to suppose that any tenant would do so. I cannot think that such was the intention of the Legislature. It appears to me that in those cases where the particular purpose for which the holding is to be used is not defined by contract, the Legislature must have intended that the purpose should be ascertained by reference to the use or uses which the contracting parties must as intelligent and reasonable men be held to have had in their contemplation when they entered into the lease." And there are some very strong passages about meadowing, laying down principles which some one seems to have thought were only recently arising in our cases. The Lords point out that

Chairman—continued.

where it would be unhusbandlike to meadow it, is a thing that nobody thought of, or ought to be supposed to have had present in his mind as his purpose. That is referred to in a passage in Lord Blackburn's Judgment, at page 829. "If grass land is mown, and the hay sold away, the grass must be deteriorated"; and Lord FitzGerald speaks of unhusbandlike use also. Here it is: "If, on the other hand" (page 839), "the contract is wholly silent as to the purpose for which the land is to be used, then it seems to follow that the tenant is at liberty to use the farm in any proper manner, consistent with good husbandry, and so as not to be guilty of waste or deterioration, but even in such a case the circumstances may raise a question as to whether the land was so let '*to be used*'" (and he puts emphasis on that) "'for the purpose of pasture.'" He then refers to the dairy farmers; he expresses an opinion that Parliament did not want to encourage them (we have nothing to do with that), and also to the graziers, and that case is the foundation of all the subsequent cases, and notably of O'Brien *v.* White.

3250. We had, among other pasture holding cases mentioned that of Drought *v.* Stubber?—O'Brien *v.* White is before that, and I would like to give you what the holding was in O'Brien *v.* White, which was a very early case. You observe it had been mentioned in the House of Lords after Mr. Justice O'Hagan had reversed the Sub-Commission. The Report in 16 L. R. I. 20, gives the particulars of the holding; it was 194 Irish acres, all grass; 107 were incapable of cultivation at all.

Mr. *T. M. Healy.*

3251. One hundred and eighty-four?—One hundred and ninety-four acres is what I have here (I took it out of the Report), of which 107 were incapable of cultivation, 32 barren rock, 12 capable of being cleared for tillage, 21 had traces of former spade culture on them (but with those we are familiar all over Ireland; they are the potato ridges that remain from the time when the population was larger than it is now), 22½ were capable of being either ploughed or meadowed, but, as a matter of fact, they never had been in anything except grass. I have seen an observation that this case decided, or was supposed to decide, that if a man tilled land with the spade between the crags, we would hold that that was not a pasture holding. With all respect, that is not so at all. If a man has land that he has been in the habit of using for spade culture, it is just as much agricultural as any other land; but if the fact is, that being let as grass nobody ever has dug it, and nobody could dig it, except by either getting himself into the workhouse or spoiling the land, the purpose of using it for pasture is attributed to him; but we are dealing in this and all like cases only with land always used as grass land. Drought *v.* Stubber was a case that was held to be a mixed farm; and there was a very similar case of Holmes *v.* Lander. In one of those cases there was an express power to till 20 acres out of a very considerable farm, but any 20 acres might be tilled each year. We pointed out that the tillage of 20 acres would

Mr. *T. M. Healy*—continued.

would involve a good deal of capital and a good deal of labour, and that it might form a very considerable portion of the purpose of the tenant. We therefore held that these were mixed farms, and that they were not let "mainly for the purposes of pasture," and in both of them the tenant succeeded.

Chairman.

3252. Then the last case was that of O'Brien?—The last case of all was that of McCormick *v.* Loftus, but before the case of McCormick *v.* Loftus there is a reported case which would give a better idea of this point than any other I know of, a case of Byrne *v.* Hill (I think it was mentioned here before) in 30 Law Reports (Ireland), page 603.

3253. In what year was Byrne *v.* Hill?—1892. In Drought *v.* Stubber and Holmes *v.* Lauder, the tenant succeeded; in O'Brien *v.* White and Byrne *v.* Hill the tenant failed. There the Sub-Commission reported (now I am on Byrne *v.* Hill) in answer to the question for what purpose the holding was most suited, that it was suitable for grazing cattle and sheep, and they described it in this way: "This is a good grazing holding and could be nothing else." They nevertheless held it to be within the Land Act, because meadowing and tillage were not prohibited. It was heard by the Lord Chancellor (Ashbourne), the Master of the Rolls (Porter), and by myself; there were only three of us on that occasion. The present tenant had first let the grass to one man, then for two years to another, then to a third; 30 acres had been mown one year, a second mowing was taken off 20 acres in the next year, and that had occurred within five years. "The entire 52 years' history of this holding, with this single exception, shows that it was a pasture farm, and the only time when any hay was taken off the farm was when the tenant was ill, and a neighbouring farmer took it and gave the tenant a bonus for allowing him to do what was wrong, namely, to remove crops of hay in two successive years. It cannot have been the purpose of the letting that the land should be used in that way." That was the user of the place. Meadowing would have been an unhusbandlike user of the land; it was all in grass, and was described by the Sub-Commissioners as being a grazing holding. We held it to be a pasture holding. The last case we have had is M'Cormick *v.* Loftus. M'Cormick *v.* Loftus was decided on the 19th December 1893. It was 413½ acres of land in Westmeath, held under a lease dated in 1871. There were no restrictive clauses in the lease. For 13 years before the letting in 1871 there had been no tillage at all. It had been let in 1871, and for 13 years before that there had been no tillage at all; between 1844 and 1850 from 14 to 20 acres had been tilled, and at the time the lease was made (in 1871) there were 150 acres of the holding that was what we lawyers call "ancient pasture," that is, land that cannot be broken up at all without a violation of the law. "Ancient pasture" in law means land that for 20 years before the letting has been in grass, and the tenant must keep it so, assuming it is not cultivable grass. That case was really decided on the same principle which

Chairman—continued.

the Land Commission laid down in Eivers *v.* Hamilton, reported in 28 Law Reports (Ireland). That was a case of land in pasture, and a herd's house, in a grazing district, with a covenant against erecting any building (a thing we always look to), but no express restriction as to tillage or meadowing. The upshot of the whole matter is this: the first thing we look to is the contract. If the contract declares the purpose, or clearly implies it, there is an end of it, for the parties cannot contradict their declared purpose, whatever it may be; but if the contract does not define the purpose, then we have to get extrinsic evidence, and we take that extrinsic evidence either from negotiations taking place at the time of the lease, or from any other matters that the parties may bring forward. After the extrinsic evidence you go to the subject-matter of the holding, and you look to see what the land is; and lastly you look to the user of the land; and in these latter branches we take into account the district where the holding is, the size of it, the nature of the land, and altogether we very much decide the same question as whether, if a man went into a shop and bought a hat, he did so for the purpose of putting it on his head.

3254. Now we have gone through six out of seven exceptions from the Act of 1881, and we come to the last exception, lands let for the temporary necessity, or convenience of landlord or tenant?—Questions have arisen on this also, because the Act of Parliament gives no indication of what "temporary convenience" or "temporary necessity" means, and, unless I am to be endless, I would only give you some instances on each side of what we hold to be a temporary necessity for the landlord and what we hold to be a temporary necessity for the tenant. First take the landlord. There have been a good many cases where the land was let with provisions for taking it up for building. There was one notable case near Dublin, close to Clontarf, where a considerable piece of land was let with the provision that, I think, nearly half of it might be taken up for building at a specified amount of rent per acre. If the fair rent had been fixed upon the holding this specific condition would still remain, and at the rate of about 3*l.* per acre the landlord would have had to take up farm land for which he himself was getting only a fixed rent of something very considerably less. It was at Philipsburgh Avenue, a place many of the Members will know, in Drumcondra; it fronted to a road, and on the map or the tenant's lease the actual piece was marked off that the landlord might take up. There was a very similar case in the North of Ireland, the case of Whisker *v.* Delacherois, where provision was made for taking up large parts of the land to let for villas; and in these cases we held that the land had been let for a temporary purpose, that is, that the landlord was letting it only until he could get a building tenant. The first case was one of land close to Rathmines, Eiffe *v.* M'Kenna, where the land had been for a long time in the hands of agricultural tenants, but it was land to which Rathmines was very rapidly approaching. I have already given you a case on the opposite side, the case of Mooney *v.* Wilcox, which was de-

Chairman—continued.

cided in favour of the tenant. That was an agricultural farm in an agricultural district, at the same time not quite outside the limits where one might expect buildings to spring up, especially since we have a tram-line there. There was a provision that the landlord might take up about four acres for the purpose of building, but he had never done it, and there was no immediate prospect of his doing it. We held that that did not at all show a temporary purpose sufficiently important, nor did it show that the character of the holding was not agricultural; and in that case (reversing the Land Commission, if I do not mistake), we admitted the tenant and fixed a rent.

3255. These were cases arising from the landlord's necessity; the other was a case arising from the tenants' convenience?—Another landlord's necessity case was a letting by the Court of Chancery in a minor matter. The Court of Chancery has no power to let land except for what is called "seven years pending the matter" in a minor's case. If a minor's property goes into Chancery they make leases of vacant land for "seven years pending the matter." The meaning of that is that the tenant may hold it seven years if the young man does not come of age in the meantime; if he does come of age in the meantime, he is entitled to the possession. It was held in Croker *v.* Clanchy that that was a temporary letting for the necessity of the landlord.

3256. Now take the case of "tenants' convenience"?—Of tenants' convenience cases, there are two remarkable ones. The first was Wilson *v.* M'Cutcheon. Mr. Wilson had an old tenant named M'Cutcheon, who was a gentleman of some position. After his death his widow remained in possession. Mr. Wilson took up a good deal of the land for his own son, and it appeared in evidence, as well as I remember, that he wanted the house as well; but the lady was old, and he left her in possession of the house and some land for her own residence, and there was extrinsic evidence of his not wishing to disturb her. She went to Kingstown; she left the farm; she brought in a nephew. Mr. Wilson then sought to put her out; and we held that he was entitled to do so; that it had been let for her convenience. I have again to remind you that these are excepted out of holdings that may be held for lives or for years. We held that therefore the *tempus* in the "temporary" might be a life. The Chief Baron, I think, differed on that point, but in Wilson *v.* M'Cutcheon it would certainly have been a very unnatural result if the kindness and the forbearance by which the lady was left in the place could have prevented the landlord from ever getting the place for what he appears to have wanted it for. The last case is a very recent one; a case on Lord Cloncurry's estate.

3257. Finnerty *v.* Cloncurry?—Finnerty *v.* Cloncurry. In 1878, at the time this Act was not in force, a middleman's lease fell out, and Lord Cloncurry took up quite a large tract of land. There were on this tract (all the rest of which he took into his own hands) two small holdings held by sub-tenants, who were a pair of old bachelors, and had been a very long time there, and he let them remain on. Of course,

Chairman—continued.

it was a new letting, because the middleman had gone out, but he let to these two men for their lives, with a special proviso in the letting, that he only let it to them for their personal residence. They served him with an originating notice, and we held (on the 5th May last) that it was a case like the other; on the evidence we were satisfied that it was a personal convenience to them not to disturb them, that no one else was ever intended to take advantage of it, and that therefore they were holding for a "temporary convenience of the tenant." Those, I think, are the only cases that I know of that have arisen on that.

Mr. *Sexton.*

3258. Can you give us any case of "temporary necessity" of the tenant?—Those two that I have given you are cases of temporary necessity of the tenant.

3259. Necessity, or convenience?—You may call it necessity or convenience; I do not know exactly what the distinction is. Both words are in the Act. I have given you two landlord's cases; I have given you two tenant's cases and a landlord's case in which the landlord failed. That is all I have got.

Chairman.

3260. You have gone through the seven heads of exception. We now come, following your chart, to what is rather important, the restriction of sub-letting under the 57th Section of the Act of 1881, and the 4th Section of the Act of 1887. There, from evidence we had before, the question of consent is a very thorny one?—The difficulty of the question appears by seeing what the state of affairs was at the time that the consent is supposed to have been given, because its materiality only arose when the Act of 1881 became law, and the dealing on which the question of consent became material was in most cases a dealing that had taken place long before, and at a time when consent or no consent was quite immaterial to anyone, except some one who had a prophetic idea that this particular form of Act was coming.

Mr. *T. W. Russell.*

3261. What is this?—This is the Act of 1881, Part VII., Section 57, and it is an unnumbered sentence in the middle: "Where the tenant sub-lets part of his holding with the consent of his landlord he shall, notwithstanding such subletting, be deemed for the purposes of this Act to be still in occupation of the holding." The plan of it is to impute to the middleman the occupation of the under-tenant; he is deemed in occupation, but the occupation in reality is the occupation of the under-tenant, and that is only done where the tenant (mark the words, for every one of them has been subject to question) "sub-let by the tenant." Now, *there* is a very big question. Suppose I, a landlord, make a lease to a middleman of land described as being in the occupation of under-tenants at the time, I undoubtedly have consented to the under-tenancies; but how am I to work the Act if such under-tenancies are sub-lettings by the tenant? It was imputed to me that I decided this in a case of Flannery *v.* Nolan, and

Mr. *T. W. Russell*—continued.

and over and over again "the dictum," as it is called, in Flannery *v.* Nolan has come up. It never has been decided because it never has been raised.

Chairman.

3262. That was a lease to a middleman, was it not?—In Flannery *v.* Nolan it happened that there were some parts of the holding that were in the hands of sub-tenants, but Flannery *v.* Nolan was decided on another ground altogether, on the ground of pasture, I think. In the course of the case counsel was speaking of this, and I remarked: "The assignment of a reversion is not a sub-letting." I only mention this now to show you that these sub-letting cases are all outside and independent of the case of a letting to a middleman, where the landlord plainly consents, not to the tenant's sub-letting, but to the land being sub-let; but if you touch that question, or seek to introduce holdings of that kind into the provisions of the Act, the machinery will not work, because occupying tenants alone are primarily within the Act. It is occupation rents alone that the Act enables to be fixed, and I have pointed out to you that under the Act 1887 the middleman gets squeezed out if he has a number of tenants who are entitled to fix rents against him and the land in his own occupation is not sufficiently valuable to bear it. The leading words in these sub-letting cases are that they deal with a case where the tenant has sublet, and therefore it must be a sub-letting after he has got his lease. From the earliest times there are complicated Statutes in Ireland about sub-letting. Sub-lettings without consent were made absolutely void for one period of the law, and a prohibition to sub-let was inferred in every lease that was silent on the subject; but that was only the law for a few years.

3263. What period was that? — Between 1826 and 1832. They have been always legislating in Parliament against sub-letting more or less, sometimes more strongly than at other times. Here we have a case of a tenant sub-letting with his landlord's consent: If the lease is silent the landlord can neither consent nor refuse with any operative result, but we have held that if he consents in fact, whether that consent is necessary or unnecessary, it is a sub-letting with the consent of the landlord, and the tenant will not be excluded. On the other hand, if he has simply done nothing, in a case where he had no power to interfere, that is not consent, and even in cases where he has power to interfere his abstaining from interfering by itself would not be enough, although less conduct where he had power to stop it than where he had no power to interfere would amount to evidence of consent. I am giving you the thing generally, but cases have arisen on those different views. In two remarkable cases, Bolton *v.* Keatinge and Mulcaire *v.* Joynt, we held the tenant to be entitled to fix a fair rent by a more or less refined consideration, namely, a letting was made by a landlord to a tenant of a tract that included a little bit that was in the possession of an under tenant. We found, as a fact, that the possession of the whole was in the hands of the

Chairman—continued.

landlord, and we imputed to the transaction this operation, that the landlord let the whole to the lessee, and the lessee then re-let the little bit to the man who was in possession; and both in Bolton *v.* Keatinge and in Mulcaire *v.* Joynt, on that ground, it was held to be a sub-letting with the consent of the landlord: in Joynt's case the sub-tenant had been there for a long time, and we thought there was evidence that the landlord had said to the man: "I will let the farm to you, but you must re-sublet to the occupier.

3264. How does this bear upon Kennedy *v.* Essex being the governing case, which we had some reason to believe?—Kennedy *v.* Essex I have got here, and will give you the facts of it.

Mr. *T. W. Russell.*

3265. I think we have had it in evidence that that is a case that has governed the Land Commission in recent times?—There is nothing new in Kennedy *v.* Essex.

Chairman.

3266. As I understand, you have told us that Bolton *v.* Keatinge implies consent from conduct; Bryan *v.* Biggs from prohibition as to part of the holding; and Mulcaire *v.* Joynt from circumstances?—Yes. Bryan *v.* Biggs I did not mention, but in Bryan *v.* Biggs (to show you what is regarded as evidence of consent) there was a lease which contained an express prohibition to sub-let two parts of the holding, but said nothing about the third, and we implied, from the prohibition to sub-let the two parts, that it was intended to consent to sub-let the third, and, the tenant having only sub-let the third, he got his fair rent fixed.

3267. The point is as it were now, to reconcile these three cases with Kennedy *v.* Essex?—Yes.

Mr. *T. W. Russell.*

3268. Does not the question of triviality come in?—Triviality comes in only under the amending Act of 1887. Kindly allow me first to deal with the Act of 1881, and then say how it was altered by the Act of 1887. The question under the Act of 1881 is quite distinct from that of triviality under the subsequent Act. Kennedy *v.* Essex is in 28 Law Reports (Ireland), page 586.

3269. I mention it just on the point of triviality; therefore do not anticipate it unless you like?—That case was not decided on the triviality point at all.

Chairman.

3270. Kennedy *v.* Essex conflicts with these other cases?—Kennedy *v.* Essex, according to my recollection, was not decided on the triviality point at all. In Kennedy *v.* Essex the tenant built three houses on the land (you will find the facts on page 588 of 28 Law Reports, Ireland), and these three and three other houses which were built at the date of the lease were all in the hands of under-tenants who were not the same as the under tenants who had been on the lands when the lease was made. The total amount of the rents received by

Chairman—continued.

Kennedy from his under-tenants was 18*l.* 2*s.* 5*d.* One of the houses sub-let was used as a public-house. Besides all this, on cross-examination the tenant stated that one week before the case was heard by the county court judge he got up possession from a man named Hussey of two acres more, which had been sub-let to him: Hussey was in possession of this portion of the lands when the originating notice was served, and had been there for over 13 years. And we held that the sub-lettings in that case, which amounted to 6 per cent., prevented the tenant from being entitled to apply to have a fair rent fixed. When I said it was not a case of triviality I find I went too far, because they did contend that the sub-lettings were trivial, but on the question of consent the case is important.

3271. Kennedy *v.* Essex is a case of consent, and not of triviality?—I went too far when I said that; I mixed it up with another case, and I ought not to have said that. The tenant contended that those sub-lettings were trivial, but he also argued the question of consent. The court was unanimous against him on the point of triviality, because six per cent. of the entire rent was derived from under-tenants; there was a public-house, and there was also the letting to Hussey, which had been taken up immediately before coming into court. The court was against him on the question of triviality.

Mr. *T. W. Russell.*

3272. You held that the six per cent. was substantial?—Yes, in this particular case.

3273. The rent was 300*l.*, in the lease, and the under-tenants paid 18*l.*, is not that so?—I cannot tell you the precise figure, it was six per cent., but there was a public-house, and there were other matters; but you will find the decision went on the consent point. The lease contained a covenant that there should be no sub-letting without a formal license in writing. It was contended that that covenant being there, because the landlord had done nothing to enforce the covenant, he therefore had consented. We said: "This principle would make the position of a tenant who had broken a covenant against sub-letting better than that of a tenant who had sub-let without being restrained by any such covenant; for the former, if his landlord took no steps to enforce the covenant, would have evidence of active consent, while the tenant holding under the less stringent lease, would have none." The case is a decision on consent; on the question of triviality, we held at the time that the six per cent. could not be trivial, and I still think we were right in that; I do not know that it was decided under the Act of 1887; that would depend upon the date of the originating notice.

Mr. *Sexton.*

3274. I suppose on the question of triviality the circumstance of the six per cent. of 300*l.* and the smaller sum had weight?—Of course; but in this particular case the Court was quite unanimous. We could not treat the sub-lettings as trivial in that particular case, especially having regard to what the tenant had done with Hussey. I do not know whether you quite understand that any tenant can get rid of this difficulty about sub-letting if he can deal with his under-tenant

Mr. *Sexton*—continued.

before serving his originating notice, and in that way the policy of the Act against middle-men would be promoted. I have sub-let, if I go to my tenant, and get him to give up to me, I can then bring the landlord into the Land Court. It is only in the case where I cannot get rid of the under-tenant, nor come to terms with him, that this question of sub-letting arises at all.

Chairman.

3275. Where you cannot get rid of him?—Yes, because all that is done is this: The occupation of the under-tenant is deemed to be the occupation of the middleman; if the middleman can get the under-tenant to go away, then he comes into occupation himself, and his difficulty does not arise.

Mr. *T. W. Russell.*

3276. What about Hussey's case; the sub-letting to Hussey? Lord Justice FitzGibbon is reported to have said that those two acres sub-let is "fatal to the *status* of the tenant at the date when he served his originating notice unless it was made with the consent of the landlord," and there was no such consent. Have not you told us that the two acres were relinquished, and given up?—They were not relinquished or given up until after the date of the originating notice. The case decides that the *status* of the tenant, as in all legal proceedings, must depend upon his *status* at the time when he commences the proceedings, and if he was not in occupation when he commenced his proceedings, he could not put himself into occupation by subsequent dealing, and the Hussey transaction had great weight in Kennedy *v.* Essex from the way it was done; his having gone in that way, a week before he went into court, to get rid of the under-tenant, showed, we thought, that the tenant himself did not regard the sub-letting as trivial, or as unimportant.

Chairman.

3277. On triviality, under the Act of 1887, you have two cases you wish to bring before the Committee, have you not?—Yes, we have had two actual decisions on the Act of 1887 as to triviality.

3278. White *v.* White and Corballis *v.* Ward?—I have seen something to the effect that we have left the Land Commission without a guide in things of this kind. Each of these cases did lay down a principle of interpretation of importance on the Act of 1887.

Mr. *T. W. Russell.*

3279. These are recent cases absolutely, almost since this Committee began to sit?—Which?

3280. White *v.* White and Corballis *v.* Ward?—Speaking for myself, I had not heard of the Committee at the time the cases were before us.

3281. You had better give us the dates; that is important?—Those are the only two cases that have come into court under the Act of 1887.

3282. Give us the dates?—I cannot, without referring to my note. I do not believe that Kennedy *v.* Essex was decided under the Act of 1887, though it may have been mentioned; but these two cases were, both of them.

3283. Did

Mr. *T. M. Healy.*

3283. Did you not decide, in Bolton *v.* Keatinge, that the Act of 1887, if it was operative, came in then, although the originating notice had, as a matter of fact, been served?—Bolton *v.* Keatinge was decided on the 8th December 1887, and therefore cannot have been a case under the Act of 1887.

3284. Did not you and Lord Justice Barry hold in that case (speaking from recollection) that although the Act of 1887 was not passed when the originating notice was served, it was a matter of fact that you would take into consideration?—I dare say he did; but Bolton *v.* Keatinge was decided in the tenant's favour, on the principle I have explained, that the real transaction was the letting of the whole place by the landlord to the middleman, and the re-letting by the middleman to the tenant; we almost estopped the landlord from denying consent, because when some dispute arose about the rents, there was evidence that the landlord (or his agent) had said: "If you are not satisfied with the reduction I offer you, go to the Land Court."

Chairman.

3285. That decision was reversing the Land Commission, was it not?—It was.

Mr. *T. M. Healy.*

3286. You say you could not have decided the Kennedy *v.* Essex case in a particular way, because the *status* of the tenant was determined at the time of the date of the originating notice?—Yes.

3287. And notwithstanding the dictum which I think exists in the case of Bolton *v.* Keatinge, and although the originating notice was served before the Act of 1887, yet as I understand you held that the Act of 1887 might operate in the original matter?—If we had to decide whether a sub-letting was trivial or whether it was not, the Act of Parliament might be taken into consideration, but I have no recollection of the dictum that is referred to, and I do not think the question of triviality was ever raised in the case of Bolton *v.* Keatinge.

Chairman.

3288. Will you give us now the cases of White *v.* White and Corballis *v.* Ward?—I will give you the date of each, and tell you who heard them; but if you will kindly permit me, I must first refer you to the Statute, the 4th Section of the Act of 1887. There are two paragraphs in the section, and the first is this: "A tenant shall for the purpose of the Land Law (Ireland) Act, 1881, and of this Act, be deemed to be in *bonâ fide* occupation of his holding, notwithstanding that he has sub-let part thereof, provided the sub-letting is for the use of a labourer or labourers *bonâ fide* employed and required for the cultivation of the holding, and the court deems such sub-letting reasonable, and sanctions the same. The land comprised in each such letting shall not exceed half an acre in extent." There is a principle of interpretation of statutes and of other documents, *expressum facit cessare tacitum*, and there

Chairman—continued.

is an express prohibition to apply this labourer's clause to anything more than half an acre. The second clause is: "A tenant may also be deemed in occupation of his holding, notwithstanding that part is sub-let, where the sub letting is of a trivial character, and the court deems the tenant to be substantially in occupation of the holding." You see there are two branches in this clause—the sub-letting it must be trivial, and the court must deem the tenant to be substantially in occupation of the holding. The first case that arose (White *v.* White) was the case of a sub-letting to labourers.

3289. What date was that?—The 12th December 1893. It takes some time for these cases to come up to us. It would take a long time in the Land Commission, and this is the first case, according to my idea, that came up on the Act of 1887.

Mr. *T. W. Russell.*

3290. And it is not reported?—It will be in time, I presume, it may be already for aught I know. As regards reporting, of course it is accessible to the Land Commission, or anyone else. This was a holding of 173 acres and 3 perches; the rent was 163*l.* 16*s.* There were two plots sub-let. Of course there was no consent, otherwise the case would not have arisen. One acre and a-half were in one; two acres were in the other; and they were both sub-let to labourers in this sense, that the tenants were obliged to pay their rents for those holdings in labour, or partly in labour, if required. The landlord's argument was that because labourers' lettings over half an acre were prohibited, and these were lettings to labourers, therefore the Act showed on the face of it that they were not excepted sub-lettings (I mean to say not within the extension), and the Land Commission, following that argument on the principle that I mentioned, a perfectly settled principle of construction, *expressum facit cessare tacitum*, held that these were labourers' lettings; that they were labourers' lettings over half an acre; and that, because they were labourers' lettings over half an acre, they could not be defended under this Act. The principle that we decided was that, as regards labourers' lettings as well as others, the second clause was to be read as well as the first; and, having regard to the facts that the men were wanted for the occupation and working of the farm, and that the occupation of the middleman was that of a farmer of the whole, and that these sub-lettings to particular tenants were really a mode of securing workmen for the occupation of the entire, he was in substantial occupation of the entire, and the sub-lettings were trivial, and we fixed the rent. That is the first case.

3291. Three and a-half acres out of 170 were held to be trivial?—They were held to be trivial by us.

3292. That is all I want?—But by the Land Commission it was held that labourers' holdings over half an acre could not be brought within the amending Act. You will observe that the *ratio decidendi*, as we call it, was different in the Land Commission; but I think I have shown you that we laid down a principle in that case.

Chairman.

3293. What was the principle in Corballis *v.* Ward?—Corballis *v.* Ward was decided this year—on the 24th April, 1894—and there was a difference of opinion in the Land Commission upon that case; Mr. Commissioner Fitzgerald thought the sub-letting trivial, Mr. Justice Bewley and Mr. Wrench thought it was not.

3294. What were the facts?—There were 161 acres in three separate parts, and one of the three separate parts was 4 acres and 29 perches, with a house on it; and that was the part that was sub-let. The rest of the place was farmed by the tenant, Ward, but this particular place he had let away; and as far as we could see, it had been let away always. We came to the conclusion that because the substantial holding was really the two large parts, and the occupation by the under-tenant of the third little bit in no way interfered with the occupation of the main holding—that that was to be taken into account in determining the effect of the sub-letting of the 4 acres upon the occupation of the entire, and that it was trivial; but the principle of the decision was this (and again I will give the *ratio decidendi* which existed in the court below); Mr. Justice Bewley's opinion was that there were two conditions, the sub-letting trivial, and the court must deem the tenant substantially in occupation, and that both conditions must be satisfied separately and cumulatively, and that no one could hold, in the case of a man who was the statutory tenant of 4 acres and a house, that his holding was to him trivial; that it could be a trivial thing as between him and anybody else; and that these conditions were cumulative. We said: "No, they are correlative; you may find out that the tenant is substantially in occupation by finding out that the sub-letting is trivial; and you may find out that the sub-letting is trivial by finding out that the tenant is substantially in occupation;" and putting the two together as correlatives, we arrived at the conclusion that Ward was substantially in occupation of this holding of 161 acres, and that the fact of the outlying piece being sub-let did not prevent him from so being in occupation, and was trivial.

Chairman—continued.

Mr. *T. W. Russell.*

3295. Whatever may be the value of those two decisions, and they seem to be very great, you would not say, at all events, that decisions so recent as these could have governed the Land Commission in dealing with sub-letting in the past?—They could not, of course. So far as they are a guide to the Land Commission, they will only affect it when they are published, unless they ask for the reports, which they can get at once.

Mr. *Sexton.*

3296. What the language of Mr. Justice Bewley seems to point to, is that a sub-letting can never be trivial unless it is trivial to the man who holds it?—It is open to that remark; so is the Act of Parliament. I would like to say about that word "trivial," that it is subject to everything that I have said about the word "reasonable" and about the word "mainly," and also it is right to guard myself about this. I do not see how "trivial" can well be imputed to a thing that is really, and in itself, valuable. It is a comparative term, and we have laid down that there must be limits, and close limits too.

3297. Is that governed by the "substantially in occupation of the holding"?—We have decided that it is governed by that. That was the principle of the decision in this second case, that the two things are to be read together, but you must also remember that "substantially in occupation" is qualified by "trivial," and *vice versâ* they are correlative; you cannot take them one by one.

3298. Mr. Justice Bewley shut them off from one another?—He did. That is a question of interpretation. Any judge must take his own view of the statute, and I give you exactly the difference between us.

Mr. W. F. Bailey, again called in; and further Examined.

Mr. *Sexton.*

3299. Have you prepared the Returns which, at a former stage, you promised to provide?—Yes.

3300. Will you hand them in now?—I hand them in now. They comprise a Table of Exclusions from the fair-rent provisions of the Land Acts; a Table of Restrictions on Claims for Improvements under Section 4 of the Act of 1870, as incorporated with the Act of 1881 under the decision in Adams *v.* Dunseath; a third Table giving the rule as to Presumption, as to Ownership of Improvements with exceptions therefrom contained in the 5th Section of the Act of 1870; and a fourth Table containing the Exclusions from and Restrictions on the right of free sale under the first Section of the Act of 1881. (*The Tables were handed in.*)

Mr. *Sexton*—continued.

Tuesday, 5th June 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. W. Kenny.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

The Right Honourable GERALD FITZGIBBON, P.C., again called in; and further Examined.

Chairman.

3301. YOU have been considering, I think, since we last met, the best practicable means of assisting the Committee to obtain any further information that they may desire to test the grounds and effect of decisions of the court of which you are a member?—Since the last day I wrote out a complete list of the 202 cases that I had mentioned, which include, as I stated, all the cases in the Court of Appeal that are on my notes from 1882 to 1894.

3302. What does that list comprise?—I give first the number, then the date, the name of the landlord, the name of the tenant, the Court that heard the case with us (that is to say, the judges who sat upon the case), the subject,—as for example, "temporary letting," "pasture," and so forth, — which party appealed, by which you will be able to see in whose favour the decision went below, and the result, that is, whether the appeal was allowed or was dismissed. "A" means that the appeal was allowed; "D" that it was dismissed; "V" that the order was varied.

3303. That document you propose to hand in?—I will hand that in, and if at any time, before the close of the work of the Committee, the names of any cases are either sent to me or to the registrar, as to which any further information is wanted, I can either bring you my own note, or get you a copy of the registrar's note; or, if necessary, I can get the papers in the case; but of course they are so voluminous that it would be only reasonable to expect an identification, by reference, of the cases wanted.

Mr. *T. W. Russell.*

3304. Assuming that half these cases are not reported, of what use are they to be to the Committee?—There are a good many of them that are reported, and those not reported are all accessible to the Land Commission, and a good many of them, I presume, have been furnished to them. They have the order in every case, and the papers come from them and go back to them.

Mr. *Sexton.*

3305. How far does the list show the nature of the matter which was at issue in the trial?—If you look at the list you will see the way in which I have done it. I told you the last day that I could not venture to give you the substance of the decisions, because it would be impossible to do so in a satisfactory manner, but I have given you what the subject was, that was dealt with in each case.

Mr. *Sexton*—continued.

Chairman.

3306. We remember your view was, that if you gave the substance you would be almost certain to be challenged with having inserted something, or left something out, which might be deemed important?—Even if I was not "challenged," I would feel myself very uneasy at being asked to state the substance of each case; it is very hard to do that fairly and fully.

Mr. *Sexton.*

3307. I wish to ascertain if there is any mode of arriving at the practical effect upon the administration of the Land Acts, of decisions in the Court of Appeal where the *dicta* of the judges in the course of their judgments may have had an effect different from, or contrary to, the effect intended upon a particular litigant; for instance, in the case of Conroy *v.* Drogheda, the tenant was successful, the Court held that she was entitled to have a fair rent fixed upon the old tenancy, but the judges, in the course of the judgment, delivered the views which have been held to upset the law as declared in a previous case?—I could not give you a better instance than that. Conroy *v.* Drogheda I would ask to-day to give you some facts about. That case was mentioned here before it was ever published at all. I deny altogether that Conroy *v.* Drogheda has any *dicta* in it that are inconsistent with any other case, or that are in any way calculated to mislead. The statement of the case before it was published, I am not answerable for.

Chairman.

3308. Do not anticipate, please, your full account of that case?—Perhaps I should add further, as a general answer to Mr. Sexton, that the cases in which anything of importance, from the lawyer's point of view, has been decided, are supposed to be all, or nearly all, reported, and the bearing of the *dicta* on the general decision will

Chairman—continued.

will appear from the report. Of course, if in any case a *dictum* gets misapplied (as sometimes happens) or is misunderstood, or is made too wide, then a subsequent appeal comes up, and the case is reconsidered and explained. I should like to make the statement once for all, that, as far as I know, there is no inconsistency in any of the Court of Appeal decisions; and there is only one of them, as far as I know, that has been questioned elsewhere, that is Fiddes *v.* Montgomery, which I have explained already.

Mr. *Sexton.*

3309. I do not mean "inconsistency"; what I mean is this, that there is sometimes in *dicta* something important as to the administration of the Land Acts which could not be gathered from a mere statement of the decision of the case; is there any more compendious mode available to the members of the Committee of arriving at such *dicta* than that of reading the reports?—I do not think there is. Reading the reports is the only way in which lawyers ever become aware of decisions. The Act is administered by lawyers in the ordinary way, and they have the reports. It would be quite impossible to pick out *dicta* from particular judgments. Very often a sentence in a judgment will bear a totally different meaning when it is read with its context from what it bears when read by itself.

Chairman.

3310. One word or two as to your position as a witness here. We understand that you are here by the wish of your colleagues in the Court of Appeal to give the fullest assistance that you can to the whole of the Committee. You have, of course, as in the ordinary practice, furnished me as Chairman of the Committee with notes of the points on which you wish to give evidence, but of course you only appear as any other witness who comes before a House of Commons Committee does, in perfect readiness to answer any question upon any part of your evidence, or outside of your evidence, if it is within your knowledge and competency, which any member of the Committee may, at the proper time and in proper order, think fit to put to you?—I know nothing about Parliamentary practice, and when I got the summons from the Committee I looked through the evidence, of which notes had appeared at that time only in the newspapers, and I also looked through my own notes, as I have mentioned. I gave you, as Chairman of the Committee, the heads of what I thought were the subjects on which you seemed to wish for information, and I got from yourself, in communications since, further statements of the matters on which you wished for information; but I do not understand myself to be in any different position towards you from that which I occupy towards any other member of the Committee.

3311. Quite so?—I am here anxious to answer each Member, and to give every Member any information in my power. I have already explained (at least I thought I had) that I am in that position with the concurrence of all my colleagues; I am as willing myself as any of the rest of them, and it is only from the accident

Chairman—continued.

that I have been the judge who has been engaged in most of these cases that I am here, as distinguished from anyone else.

3312. Of course, to apply to you the word or the process of cross-examination would be erroneous, because that implies that you would be a witness for one of two parties, which, of course, is by no means your position?—"Cross-examination" to a barrister means the examination of a witness by an opposite party from the party who has called him.

3313. That is what I meant?—In that sense I do not recognise anybody as cross-examining me, in a matter in which I am not a party at all, nor a witness for any party; but, in the other sense of being examined as to the details, the grounds and particulars, of any particular matter that I mention, and above all being further examined to bring out all the facts where I have only given the substance, it is my desire to do all I possibly can to answer everybody, irrespective of whether I am being cross-examined or not. I rather think the Parliamentary term that would express my position is that I am here to be "heckled," not to be cross-examined.

Mr. *Sexton.*

3314. We are here authorised by the House of Commons to ascertain what has been the interpretation given to certain Statutes, and I suppose you would desire to answer any questions that may enable us to find out or to make more clear the interpretation you have given to the Acts, or to make more clear the interpretation of your judgment upon particular cases?—Certainly, in particular cases and judgments of the Court of Appeal; but I gave on the last day a caution, which I think I must repeat again, that is, that I cannot venture, for several reasons, to carry that process beyond my own court, because in the first place, judgments as to which I might be cross-examined (if I may use the expression) might come before us hereafter, and in the second place, and more important place from my point of view, I do not know the grounds, and I do not know the facts of any case, unless they have come before me judicially.

Chairman.

3315. We will begin with Adams *v.* Dunseath. Now, for my own part, although I have heard of Adams *v.* Dunseath ever since I came to the House of Commons, I should be glad to know (and I believe the Committee would) the facts and the course of the case to begin with?—Adams *v.* Dunseath is all in print, in the 10th "Law Reports," (Ireland). It occupies 90 pages, and it begins at page 109, and I would ask leave, in any answer I give about it, to read the *ipsissima verba* from the report; any paraphrase might mislead, and therefore I would ask, in speaking, both as to myself and as to other judges, to take what I say from the printed report, which is available for everybody, and speaks for itself.

3316. Will you begin by telling us the facts then?—The holding was part of the lands of Kildowney near Ballymena, 42½ acres, and the rent was 36*l.* 10*l.*, when the originating notice was served on 17th October 1881. Before 1842, 33¼ acres were held by a tenant named James M'Kee,

Chairman—continued.

M'Kee, under Lord Mount Cashel, at a rent which did not appear.

3317. That is 33½ out of the 42½ acres?—Yes; you will find afterwards that 10 acres, or nearly 10 acres, of bog were added to the holding subsequently, but were not incorporated with the rest till 1875. I will not mention any fact that is not important to the judgment, and all the facts bear directly on it, which I shall mention. In 1842 the lands were valued and a rent of 26*l.* 11*s.* 6*d.* was put on the 33½ acres; and between 1842 and 1845 (page 111) James M'Kee built a house, using in some degree the materials of an older house. He built that house, as the case found, under an understanding, though not perhaps a contract, that he could have a lease if he wished.

3318. One moment: Was M'Kee a tenant from year to year, or on lease?—That does not appear, but he presumably was a tenant from year to year until 1845; but between 1842 and 1845 he built this house; and on 2nd of March 1846 he got a lease for 30 years from 1st of November 1845, at 26*l.* 11*s.* 6*d.*, the valued rent; that 30 years' lease expired on the 1st November 1875. Being in possession under that lease (a very important fact) in October 1846 he assigned all his interest to John Adams, who was the father of David Adams, the tenant before the court, for 240*l.*

3319. He sold his lease?—He sold the lease out and out to John Adams for 240*l.* As the law then stood, that assignment conveyed the house to John Adams for 30 years, but for no longer. John Adams lived until 1869, and died leaving David Adams in possession. David Adams was the tenant before the court; and (a very usual thing in Ireland) he apparently had not taken out administration, and had no legal title; but we do not question those things in Ireland; it is for the Revenue to look after that. David Adams was admitted to represent John. Now the next step, and in my judgment a vital step, was in 1851, it is in print at page 112, that it was "1857;" it was 1851. On 13th April 1851 the Landed Estates Court conveyed the Mount Cashel Estate in Kildowney to William Dunseath, the husband of Mrs. Dunseath, who was the landlord before the court in 1881, for 6,000*l.*; that is to say, in 1851 Dunseath bought, with other lands, this holding of Adams, subject to the lease for 30 years; but again, as the law then stood, that 6,000*l.* bought and paid for the house, from the time that the lease was up. Of course the tenant had it so long as the lease lasted. That house was the only alleged improvement made before the lease; but during the lease John Adams put up some buildings; he reclaimed land; he made fences, drains, and a farm road. He died in 1869. After his death, and before 1875 (that is during the last six years of the lease), David Adams did some other improvements, reclamation, fences, and drains, and during the lease he also picked up, from time to time, bits of bog, amounting altogether to nine acres, or thereabouts, and he paid rents for them amounting to 4*l.* 10*s.* (these were small rents all added together); and he improved a part of the bog by reclamation. The bog was not in the lease, but that brought his acreage to 42½ acres, and his whole rent, as you will see, up to 31*l.* 1*s.* 6*d.*

Chairman—continued.

3320. It is 31*l.* 1*s.* 6*d.*?—£.31 1*s.* 6*d.*; and it brought up his acreage to the whole area, 42½ acres, which was in the originating notice. The lease expired on the 1st November 1875, and there is a very important statement on page 113: When the lease expired, as was common in Ulster (this was near Ballymena) there was a re-valuation for the purpose of fixing the rent. They had a kind of fair rent arrangement of their own in that part of the world, and this holding was re-valued, and strangely it happened that it was re-valued by the same man who had fixed the rent in 1842, 33 years previously. Now this statement appears at page 113: "He stated that in valuing the land he took no improvements into consideration, but kept the improvements out"; and he put 31*l.* 17*s.* 6*d.* or what had been in the lease, and 4*l.* 10*s.* was added for the bog, which made 36*l.* 7*s.* 6*d.*; and at that rent, as tenant from year to year, Adams held at the time he served the originating notice in 1881.

3321. That is to say, in 1875 the valuer made the rent about 5*l.* a year higher than it had been in 1842. It was raised from 31*l.* 1*s.* 6*d.* I think you said?—Yes, to 36*l.* 7*s.* 6*d.*, so the rise would be 5*l.* 6*s.*

3322. But leaving the bog out, which was a new element?—It was not a new element; the bog comes into both figures; the bog rent was 4*l.* 10*s.*

3323. Ultimately the amount at which it was valued was 36*l.* 7*s.* 6*d.* This same valuer valued it at 31*l.* 17*s.* 6*d.*?—But on the valuation he stated that he did not take the improvements into account at all. I am now speaking of what I do not know practically; in 1875, probably land was high, and in 1842 it was not so high; but at all events that is the difference.

3324. Then how did the case exactly come before your court?—It came before us on a case stated setting out all these facts. A copy of the case is given in the report.

3325. First of all, Adams had applied to have a fair rent fixed?—Adams served an originating notice; that was heard by a Sub-Commission, and they fixed a rent of 30*l.* 15*s.*, but I apprehend that 30*l.* 15*s.* included the bog as well as the other land; that is to say, they reduced the 36*l.* 7*s.* 6*d.* to 30*l.* 15*s.* That came before the Sub-Commission on the 19th November 1881.

Mr. *Sexton.*

3326. Were they unanimous?—I presume so. The case does not say they were not.

Chairman.

3327. Then Dunseath appealed, I suppose?—He asked for a re-hearing; you will remember my point as to that.

3328. Yes?—He got the re-hearing, and on the 9th January 1882, the Head Commission affirmed the order of the Sub-Commission, and affirmed the rent.

3329. £.30 15*s.*?—£.30 15*s.* Dunseath appealed (the landlord). To some extent it is speculation, but I apprehend, from the fact that it was the landlord who applied to come to us, that in that 30*l.* 15*s.* he had not got the credit he thought he ought to get for improvements. That does not appear in the case, but that would be

Chairman—continued.

be the inference, I take it, from the fact that the landlord was dissatisfied, and that none of his requisitions were acceded to (page 113).

3330. The pink paper which we have heard so much about in this case?—The pink paper is a new invention; it did not exist at that time at all. They probably had field notes. I do not know what they had; they had no forms such as they have the benefit of now, I believe.

3331. Then the Land Commission stated the case?—They did.

3332. In stating that case they submitted a certain number of questions to your decision?—They submitted five questions that were not the same as the five questions we answered; and to understand the position of the Court of Appeal in the matter, I must ask leave to point out what the distinction was. Their first question (I will put them shortly) was whether the landlord should be allowed rent in respect of all improvements before the lease (2nd March 1846), that was the house.

Mr. *Sexton.*

3333. Before the expiration of the lease?—I beg your pardon, you are quite right.

Chairman.

3334. Oh, no?—Yes, Mr. Sexton is quite right, the first question is "before the expiration of the lease." That would cover the house and all that was done under the lease. The second question was, whether the landlord was to be allowed rent in respect of all improvements made during the lease, except those made by David Adams. That was a small point, but the point was, whether John Adams was the predecessor in title of David; because (as I told you) David had not taken out administration or anything of the kind. Then the third question was, whether the landlord should be allowed any rent in respect of all improvements made before the making of the lease of the 2nd March 1846.

3335. That was the house only?—That was the house only, the case so found (page 111). Fourth, whether the landlord should be allowed any rent in respect of improvements made during the currency of the lease, on the ground that the final clause of 1870 (Section 4), required some deductions to be made, in ascertaining the tenants' interest in such improvements, for enjoyment and for the other matters mentioned in that section; and fifthly, and lastly, whether the landlord should be allowed some rent in respect of improvements made during the lease, on the ground that the tenant by holding under the lease had been, if not altogether, to some extent compensated for his improvements, by having been allowed to enjoy under the lease.

3336. Now these five questions, submitted to them by the Land Commission, the Court of Appeal refused to answer, would you tell us on what grounds?—I will give the grounds from the judgment of the Lord Chancellor on page 117. These questions were based on requisitions from the landlord's counsel, which are given on page 116; and here is what Lord Chancellor Law says, on page 117: "However well adapted the requisitions were for their original purpose, they are exceedingly difficult, if not practically impossible, to answer clearly when thus turned into questions. Some of them propose a single

Chairman—continued.

legal question as applied to different states of facts; and in short any precise answer to them would require so many qualifications and distinctions, that we have thought it better, on the whole, to extract for ourselves and answer the purely legal questions which arise in the case as stated, leaving the Land Commission to apply our answers to the facts as they have already been, or may hereafter be found by them." Put shortly, the question whether the landlord was to be allowed any rent, and if so, how much, in respect of any particular improvement, depended partly upon the facts of the case with regard to that improvement, to which the Land Act says the Land Commission alone are to address themselves, and no decision as to the amount of rent or value can be reserved for the Court of Appeal, and a case can be stated only on a question of law.

3337. That is the 48th Section of the Act of 1881?—I gave you the reference the last day.

3338. Section 48, I think, Sub-section 2?—Yes, the Act of 1881, Section 48, Sub-section 2; with a paragraph unnumbered coming after that.

3339. Beginning "The Land Commission may," &c.?—Yes, I think you will find it there.

3340. "The Land Commission may of its own accord, or shall, on the application of any party to any proceeding pending before it, unless it considers such application frivolous and vexatious, state a case in respect of *any question of law* arising in such proceedings, and refer the same for the consideration and decision of Her Majesty's Court of Appeal in Ireland. The Land Commission may also, in case it thinks fit, permit any party aggrieved by the decision of the Land Commission in any proceedings to appeal in respect of any matter arising in such proceedings to Her Majesty's Court of Appeal in Ireland; provided that no appeal from the Land Commission to the Court of Appeal in Ireland, shall be permitted in respect of any matter arising under Part V. of this Act, or in respect of any decision as to the amount of fair rent, or any question of value or of damages, or any matter left in the discretion of the Land Commission. The decision of the said Court of Appeal on any such question so referred to it shall be final and conclusive"?—You observe the words are mandatory, "no appeal shall be permitted"; and we considered we were bound not to permit it.

3341. Very well. In other words, Lord Chancellor Law held, first, that the questions of fact and law were very much mixed up in these questions submitted to you, and that the questions of fact you were precluded from going into by the 48th Section of the Act of 1881?

Mr. *Sexton.*

3342. Has it to be regarded as a case stated?—It was a case stated.

3343. Treated as such?—Certainly; of course we had no materials except (as I mentioned the other day) the case itself, and documents referred to in it.

Chairman.

3344. It will, perhaps, make what you are going to tell us clearer if, before giving us the five legal questions which you extracted from these points submitted to you by the landlord,

you

Chairman—continued.

you gave us broadly the two extreme contentions of the parties?—The landlord contended that, having regard to the dealings, the tenant's starting point was the re-valuation of 1875, when Adams became a tenant from year to year, at the rent fixed then of 36*l.* 7*s.* 6*d*; and he contended that he was entitled to the fair rent of the holding in full, as the holding stood when that letting was made. It was, in law, a new letting, the lease having expired.

3345. That is to say, in 1875?—In 1875. The lease was out on the 1st November 1875; the tenant was put in at a different rent on the re-valuation, and the landlord contended broadly this; and, of course, I am putting his extreme contention, because he fought each part separately afterwards; his furthest contention was, that the fair rent should have been fixed on the holding, as he let it immediately after the 1st November 1875.

3346. That is to say, the holding, the improvements, and all?—Improvements and all.

3347. Now what was the extreme contention on the other side?—There were two most important contentions by the tenant, and I do not know that you have had them very clearly yet. The first great contention of the tenant was, that whenever the letting value of land has been increased at all by any work done by the tenant, the whole increase of the letting value belongs to the tenant, and is not to be taken into account at all in fixing rent. His second contention was, if he could not go that far, that the Act of 1881 (Section 8, Sub-section 9) was to be read wholly irrespective of any other clause in the Act, and that whatever improvements the tenant had made upon the place were to be wholly excluded from consideration in fixing a fair rent, no matter what had been the history of the holding previously. Do I make that clear? The things are quite distinct. The first point about increased letting value is quite distinct from the point of the correlation of the Acts to each other.

3348. The correlation of the Act of 1881 with the Act of 1870?—Yes; there are more Acts now.

3349. The first contention, I think, you made very clear; I am not so certain that I follow the second as clearly?—The second you will probably follow better from the judgments; but upon the first contention the Court was unanimous against the tenant, that is, that "improvements" was defined (1870, Sect. 70), to mean the works done by the tenant, and that what he was exonerated from rent upon was, not the total increase of letting value caused by those improvements, but the improvements themselves, the works done by him and his expenditure upon them.

3350. You are now beginning to go through the five questions which you extracted?—Yes; I will take them one by one, or give them all first, and then go back to the first, as you please, but I am afraid I shall have to go through each of them.

Mr. *Sexton.*

3351. Have you concluded the point of the tenant's extreme contention?—I think so. I have given the extreme contention of the landlord and the extreme contention of the tenant. The tenant also contended as regards each class of improvements, those before the lease, during the lease, and subsequent to the lease, that the

Mr. *Sexton*—continued.

works ought to be entirely left out; but his extreme contention was what I have told you, that the improvements which were exempted from rent included the entire increase of letting value consequent on the making of each and all of those improvements; and, secondly, that 1881, Section 8, Sub-section (9), even taking improvements in its narrower sense, exonerated every work that he did from being assessed for rent at all.

3352. That is to say, that, practically, Section 4 of the Act of 1870 did not apply to them at all?—The last clause of Section 4 of the Act of 1870 was one of the main clauses, but there are other clauses, about compensation and other things, to which the same arguments applied. It was, in point of fact, whether the parts of the Act of 1870 which dealt with the subject of compensation for improvements affected so or measured what was the interest of the tenant to which regard was to be had in fixing the fair rent under the Act of 1881, Section 8 (1). I think, perhaps, it would be better for me to get rid, once and for all, of that question about the full value.

Chairman.

3353. Will you do that?—Lord Chancellor Law, on page 118, puts the case very clearly. Now, mind; I am not on any point, except the tenant's claim to the total increased letting value; it is a perfectly separate question, and it is one on which the Court was entirely unanimous. "In the Act of 1881" (page 119), "therefore, as well as in the Act of 1870, we must interpret the word 'improvements' as meaning simply suitable and ameliorative works executed or done upon the holding. Being suitable and ameliorative, they, of course, increase its letting value; but the works are one thing, and the increased letting value another. The works executed by the tenant are wholly his, and are to be completely protected and secured against confiscation, whether by imposition of rent on them or otherwise. But so far as those works may have brought out latent powers and capacities of the land, and so increased its letting value, that increased value does not necessarily belong to the tenant."

Mr. *Sexton.*

3354. "Does not necessarily belong to the tenant"?—"I say necessarily" (I am reading on), "because whilst there are many cases in which the increased yearly value would be no more than a fair return for the tenant's outlay in effecting the improvement, as in the case of permanent buildings, and in many kinds of reclamation, there may still be cases (as mentioned by Mr. Butt in his Treatise on the Act of 1870, at page 128), in which the increase of yearly value is so greatly in excess of the most liberal allowance to the tenant in respect of his improvement works, that the landlord, in the ascertainment of a fair rent, is justly entitled to have some share of that increased yearly value."

3355. I shall be much obliged if you will read down to the end of that paragraph of the Lord Chancellor's judgment?—The reason why I stopped where I did was that I am now only on the point of the increased letting value;

Mr. *Sexton*—continued.

but I will read it: "In my opinion, therefore, the negative provision contained in Sub-section 9 of the Fair Rent Clause (Section 8) of the Act of 1881, that 'no rent shall be allowed or made payable in respect of tenant's improvements,' secures against the imposition of any rent only the improvement works, that is, their yearly value, leaving any increased yearly value beyond that to be dealt with under the earlier part of Section 8, as may, under all the circumstances of the case, be considered just and fair between the parties." I may say, having read that, that is only the continuance of the same; and there was no difference in the court upon that point. Bear in mind, once for all, you will not find in Adams *v.* Dunseath from beginning to end any presuming on the part of the Court of Appeal to enter on the question of the *amount* of rent that was to be allowed. The elements that were to be considered were matters of law, and those we tried to lay down; but what the effect of the consideration was to be, in amount, was removed from our jurisdiction, and we did not meddle with it.

3356. So far as this point is concerned, can we ascertain from you whether there was anything in the judgment in Adams *v.* Dunseath directing what was to be done with that part of the letting value arising from the improvements, after the cost of them had been given to the tenant?—There is a passage in the judgment of Sir Edward Sullivan that does go very much to that point. I intended to quote it later on another question. What we all meant, at all events, and I think we said it, I hardly like venturing to give the substance, was that they were to go back to the Land Commission, and that, having regard to the interest of landlord and tenant as defined by the law, they were to do what was fair and right in fixing the rent.

3357. After the cost had been defrayed?—That question of how it was to be assessed, whether by first taking the cost and allowing a certain interest upon it to the tenant and the rest to the landlord, or by taking a proportionate value of tenant's interest and landlord's interest, and then dividing it; that was a question of valuation, and was taken from us; and as to the mode of working it out I can say nothing; I know nothing. We had to give them the legal elements on which the valuators were to proceed, but the mode in which the valuators were to proceed was left, as you will see in many passages stated expressly, to the Commissioners, who were supposed to have professional understanding and knowledge as to rent and value.

Mr. *W. Kenny.*

3358. That is the reason why I would ask you just to finish that paragraph. It does refer to it?—"For it should be observed that though the absolute prohibition of charging rent contained in this 9th Sub-section is thus limited, it by no means follows that rent is to be charged on all outside the scope of the prohibition. That is a matter for the Commissioners in the exercise of their discretion, and having regard to what may appear to them to be just and right." Of course, "just and right" means just and right having regard to the particular facts of the case.

Mr. *W. Kenny*—continued.

That all does bear on what I was on. I was asked to read it all, but I wanted to give you one passage from Sir Edward Sullivan's judgment to show the same thing. It begins on page 136. "My opinion is that the word 'improvements,' as used in the 9th sub-clause of the 8th section of the Act of 1881, must receive the same, or rather the identical, meaning it has in the Act of 1870; and in the various other parts of that Act and the Act of 1881 where the word occurs, it does not, and cannot, mean the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused that increase, or rather the interest of the tenant who made them, *measured by the money expended on them, as declared and limited by the said two Acts.*" He then refers to the express definition of "improvements," and to the conclusion that Mr. Justice O'Hagan and Mr. Commissioner Litton had come to, and he says it is erroneous: "An interpretation of the 9th sub-section in question, which would make the term improvements therein mean the whole increase of letting value, involves consequences so large and startling that one testing the construction of the Statutes is at once disposed to think some error must exist; for as a tenant on quitting his holding would only be entitled at the utmost to the value of the expenditure on the work that caused the increase of letting value, he, remaining in his holding and claiming to have a fair rent determined, would on such an interpretation be entitled to have awarded to him as his own property, as against the landlord, the whole increase of letting value caused by his expenditure." He then sets out instances, and as an answer to what Mr. Sexton asked, would refer to page 139. He gave an illustration of a man spending 500*l.*, causing an increased letting value of 100*l.* a year, and in which the compensation would be 400*l.*, and on page 139 he says this: "In the illustration I have put, the duty of the Commissioners in determining a fair rent would be not to allow to the tenant the whole increased letting value of 100*l.* a year, but to assess what would be a fair percentage or yearly allowance for his expenditure, checked and qualified by the consideration of what he would get on leaving his holding; and supposing they thought 400*l.* would be the sum payable, and that a percentage of 10*l.* or 12*l.* per annum was to be allowed upon it, they should leave the 40*l.* or 48*l.* for the tenant free from any rent in respect thereof, while the remaining 60*l.* or 52*l.* should be dealt with by the Commissioners under the early part of the 8th section of the Act of 1881, with due regard to the interest of the landlord and tenant respectively." But then he adds what I must call attention to: "These figures are only used by me to illustrate my meaning. All this would be for the Commissioners, acting under the principles I have indicated, and by which, I think, they are bound." I may say each judgment has a passage in it on this point. The Chief Baron, at page 157, said he thought it was not intended by 1881, Section 8, Sub-section 9, to transfer to the tenant any part of the landlord's interest, "either in the holding, *or in the improvemements* thereon." I myself, at page 178, gave

Mr. *W. Kenny*—continued.

gave the case of one man with a good piece of land, another man with a bad piece of land, each holding at the same rent; each man spends the same amount in improvement; to one, the land being good returns three or four times as much as bad land returns to the other. It did appear to me that if I was asked to fix a fair rent on those holdings the landlord ought to get more for the good land than for the bad; on that point we were all unanimous, and I do not think I need refer further to it.

Mr. *Sexton.*

3359. Is that your account of the answer on the first question?—That is part of it. That is the answer to it on that point, but it also raised the point of reading the two Acts together, which I will come to on the third question, because No. 3 raised that point also.

3360. I should like you to tell me whether in regard to the question of letting value arising from improvements of the tenant the judgment went no further than this; to agree positively to the tenant under sub-section 9 of section 8, an allowance in respect of the cost of making the improvement, but that the judgment gave no mandate whatever in regard to the letting value in excess of the cost of an improvement, but left that matter to the discretion of the court below, having regard to the interest of the landlord and tenant respectively?—To their "discretion," yes; but to their *judicial* discretion, that is to say a discretion, to use Sir Edward Sullivan's expression (page 139), "checked and qualified by the consideration of what he would get on leaving his holding." You will find this at the end of my judgment, if I may quote it, that fixing a fair rent was not a question of fact. "I am confident that upon that question, as between the present parties and all others affected by like considerations, the judgment, and the only judgment, to which the law has confided its final settlement, namely, the judgment of the Court of the Land Commission, will henceforth be exercised with due regard to the statements of the law, which it has been our duty now to pronounce, but in all other respects upon its own responsibility" (page 199). It would mislead if I told you that it was left entirely to their discretion; they were bound to have regard to what the interest of each party was; and Adams *v.* Dunseath undoubtedly did lay down that that interest was qualified as against the tenant by the provisions of the Act of 1870; but to what extent it was qualified in each particular case, in moneys numbered, it was distinctly stated that it was for the Land Commission to decide and not for us.

3361. My point is more limited; my point is, did the direction of the court, that the tenant was to be protected so far as the cost of his improvements was concerned, contain or involve any direction as to what was to be done with the rest of the letting value arising from the improvements?—It did, in any case where that increased letting value on the facts was (for the reasons I have referred to) shown to be part of the interest of the landlord.

3362. Oh, yes?—But in a case where a tenant's expenditure was really not more than remunerative I understand Adams *v.* Dunseath to have said that there the landlord had nothing to claim.

Mr. *Sexton*—continued.

3363. It will save time hereafter if we can just get now a clear idea of this point. In saying that the tenant was to be protected in respect of what he had expended you did not say, and did not mean to say, that the rest of the letting value was necessarily to go to the landlord?—Not only not the whole of it, but in every passage in which it is referred to, it is stated that the interest of landlord and tenant respectively in that remainder was to be had regard to.

3364. And the discretion of the court, applied to that question of respective interest, was to be the test of the disposition of a remainder?—Yes; but there were cases in which it would all belong to the landlord, and there were cases in which nearly all of it might belong to the tenant. For example, in the case I have put, of a man spending a hundred pounds, suppose the letting out of a river, and the spending of a hundred pounds, would clear a country side, I suppose when the man had got back his money by his enjoyment under his tenancy, and so forth, the inherent quality of the land would be the landlord's. I cannot answer it better than that.

3365. All that is at the discretion of the court below by the judgment in Adams *v.* Dunseath?—I do not like to use the word "discretion," because that may mean that it leaves them to do what they like. Adams *v.* Dunseath did not leave them to do what they liked. It defined what was meant by the interest of the landlord and the interest of the tenant, the definition was limited by law, and then it said: You are to have regard to those two interests, but how much should go to one and how much to the other is for yourselves to decide.

3366. At any rate it is clear that the fact that the tenant was to receive back the money he had expended for improvements, did not of itself involve or contain any conclusion as to what was to be done with the rest of the letting value?—Legally, certainly not; but on the other hand (I am now dealing with a question with which I have nothing to do, that is the mode of valuation) if the Sub-Commissioners in the first instance, or the Land Commission, had given the tenant something very liberal, by way of allowance for outlay, then I would take it that they had compensated his interest. It was for them to say how much belonged to the landlord, and how much belonged to the tenant; and in what way they set about doing that was for themselves. If in the first instance they gave him 20 per cent. that might be enough for his whole interest; if on the other hand, they only gave him 4 per cent., and there was a large increase of letting value, they ought to take into account how much belonged to the inherent quality of the land, and how much was fairly referable to the tenants' interest. The mode of valuation is a mystery to any one except a valuator, and I am not a valuator.

3367. It is their work and not yours?—Certainly; and not only their work by profession, but their work by statute.

Chairman.

3368. Now do your answers to Mr. Sexton's

Chairman—continued.

questions exhaust what you want to say about the first question into which you inquired, namely, the meaning of improvements?—The question of the meaning of "improvements" was subject to the same considerations that under Question 3 come out more clearly on the meaning of "predecessor in title." I have exhausted the first point which is quite distinct; that is, whether "improvements" and "increase of letting value" meant the same thing. On that, I repeat once for all, the Court was perfectly unanimous; I have read the judgment of the Lord Chancellor; I have read the judgment of Sir Edward Sullivan, and, except that it would take too long, I could give you similar passages from everybody else.

3369. The second question turned upon the meaning of "predecessor in title"?—That is quite different; and the second question really depended upon the effect of the Act of 1881, Section 7, which was an amending statute passed with regard to a particular decision, and I do not know whether you have had that decision fully before you or not.

3370. It is Holt *v.* Harberton, is it not?—Yes; Holt *v.* Harberton. Holt *v.* Harberton was a case decided before I was on the bench, and in which I was counsel for the tenant. There is a provision in the Act of 1870 enabling a tenant during his lease to register any improvements that he has made with a view to being able to claim compensation when his lease runs out.

3371. That is by the Act of 1870?—That is by the Act of 1870, Section 6. Holt was a tenant who had taken a lease after he had made certain improvements, including amongst the rest, I think, the building of a valuable house. He applied (under my advice) to register his improvements, because the lease was a long one. Lord Harberton was the landlord. At the end of the lease Holt might be dead, and they might not be able to prove what he had done. He put into his schedule of improvements things done before the lease, and things done after the lease. The case was argued before the Appeal Court under the Act of 1870. It was a very large court, consisting of nearly all the judges, and it was held that "predecessors in title" meant "predecessors in *the same* title," and that the lease was the root of the title, and that he could not register, and therefore could not get compensation for improvements made before that lease. I was quite certain that the Act of 1881 was intended to alter the effect of that decision.

3372. The 7th section?—The 7th section; and this second question in Adams *v.* Dunseath (in which the Court was four to three in favour of the tenant) turned entirely on the effect of the Act of 1881, Section 7.

3373. The point of Section 7 is, is it not, that the tenant on quitting the holding shall not lose his right to receive compensation by reason only of the determination, by surrender or otherwise, of the tenancy?—There are three clauses, and they are correlative. The first one is Section 7: "A tenant on quitting the holding of which he is tenant shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870, by reason *only* of the determination by surrender or otherwise of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, and the acceptance by him or them of a new tenancy." The second paragraph refers to surrenders. But there is also the third paragraph; "The Court, in adjudicating on a claim for compensation for improvements made before any such change of tenancy or tenants" (these words were all discussed in Adams *v.* Dunseath) "shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the Court may seem just."

3374. I presume it arose in Adams *v.* Dunseath, this point, because of M'Kee; they wished to include M'Kee as a predecessor in title?—It arose at two steps; it arose first because of the lease of 1846, and then on the reletting in 1875, for the landlord fought both points.

3375. Fought both points?—Yes; he contended that the reletting of 1875 should be taken as the starting point; failing that, he contended that the lease of 1846 was the starting point.

3376. Then the landlord wished to exclude both M'Kee and John Adams?—Of course he did. His contention was that they should start from 1875, or failing that, from 1846.

3377. How did the Court go upon this point?—Upon this point the Lord Chancellor, the Master of the Rolls (Sir Edward Sullivan), the Chief Baron, and myself, were in favour of the tenant, that is, that the meaning of "predecessors in title" had been widened, under the facts of this case.

3378. And included M'Kee?—Well, might include M'Kee, and did include John Adams. There was a distinct point about M'Kee that I have to give you.

3379. The Court was four to three?—The other three judges, the Lord Chief Justice, the Chief Justice of the Common Pleas, and Lord Justice Deasy, were of opinion, because there was no express reference to "predecessors in title," nor any new definition that altered the meaning of it, that it still meant "predecessors in the same title"; but the rest of us, particularly having regard to the words, "change of tenancy or of tenants," all held, that as long as you have a string of tenants with the same holding, the giving up one tenure and the taking of another was immaterial, and that the meaning of "predecessor in title" was therefore widened by the Act of 1881, Section 7.

3380. That was, of course, very important for your original decision, was it not?—That was, and in this particular case it had a very large effect. When I say that, I mean as large as any other.

3381. As important as many of the several important points of Adams *v.* Dunseath?—It was one of the important points.

Mr. *Sexton.*

3382. Of course it applied also to the landlord, too; I mean in case the tenant for life had paid or compensated for?—On "compensation," really, nothing turned; and we were all in favour of the tenant on the compensation point. You will observe the amending Act deals only with "change of tenancy or of tenants."

3383. But

Mr. *Sexton*—continued.

3383. But the wide interpretation you give us of "predecessor in title" gave a reflex benefit to the landlord, communicated from his predecessor in title?—I really think there is some point, as well as I remember, on the definition, which prevented the question from arising about the landlord: I cannot answer that at a moment. The "predecessor in title," at all events, was held to be extended by the Act of 1881 to cases such as Holt *v.* Harberton, and we held that the tenant was not deprived of compensation for improvements, where those improvements had been made by either himself or anyone who was his predecessor in title in the holding, as distinguished from the lease.

3384. It was said, in fact, was it not, that it was enough if there was a "substantial devolution of title to the possession," and in the case of the landlord, if there was a "substantial devolution of title to the reversion;" that was the phrase used, I think, by the Lord Chancellor?—I think I can best give you the substantial effect of it (page 120) from the Lord Chancellor; speaking of this sub-section, "That section plainly was inserted to remedy the mischief and injustice often caused by the strict interpretation of those words, which required not merely that one tenant should derive title from another, but that the title or tenancy itself should remain identically the same throughout; the necessary consequence being, that on any change whatever of the tenancy, the tenant's property in his improvements, whether made by himself or by those from whom he derived his original interest, was in effect transferred to the landlord, without any consideration being given for it, and in fact without any such result being contemplated or desired by either party. The 7th section of the Act of 1881 removes this technical objection to a tenant's claim to compensation for improvements made before the supposed change in the tenancy, leaving it to the Court, in adjudicating on the claim, to take into consideration all the circumstances under which the change of tenancy or tenants took place, and admit, reduce, or disallow the claim, as it may deem just." This is the substantial effect of the answer to the second question; and on page 121 it is very shortly put: "It is manifest that in this section the old, strict, technical interpretation, requiring the 'predecessor in title' to be predecessor in the ***same*** title, must be rejected, and the expression be taken to be here used by the Legislature in a less technical and wider sense, as simply denoting a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they may have undergone."

3385. And he said later on, did he not, "All these difficulties, however, and more might be suggested, will be at once avoided if we take the expression 'predecessor in title' as applied to both tenant and landlord alike, to be used in an untechnical and popular sense, as not necessarily involving the idea of one single estate continuing unbroken and undetermined throughout the whole line of succession, but as denoting in one case the substantial devolution of title to the reversion, and in the other the substantial

Mr. *Sexton*—continued.

devolution of title to the possession from predecessor to successor"?—That is a matter of more generality. I think you will find the same in the judgment of the four judges who concurred in the point; the other three, in effect, adopted the narrower construction in Holt *v.* Harberton. The Chief Justice says, page 134, "In my opinion, this term 'predecessor in title' continues to bear the meaning which the case Holt *v.* Harberton ascribed to it."

Chairman.

3386. Now as to the third question. The third question was, whether the 4th section of the Act of 1870 (the final paragraph of it) was applicable to rent-fixing under the 8th section of the Act of 1881; is not that so?—The first large question decided by Adams *v.* Dunseath was what I have said about improvements and letting value; the second decided the effect on the Act of 1881 of the Act of 1870; and on this point the judges were six to one.

3387. The first was on the meaning of "improvements"?—Yes.

3388. The second point was on the meaning of "predecessors in title." Now the third is on the Act of 1870?—Yes, it was really a corollary on the second point about improvements, which was involved in the first question. The meaning of "improvements," so far as it turned on the difference between letting value and cost, had nothing to do with this question of incorporating the Act of 1870 at all; but when it came to the question of the two Acts, the same arguments were equally applicable to the construction of the word "improvements" and to the construction of the words "predecessors in title," so far as they turned on the reading of both Acts together. The first three questions, on that point, depended on similar considerations. Now I would like to give you one passage (I will do it you as shortly as I can) from each of the judgments.

3389. You are now on the third question?—I am now on the third question. The third question was, whether the provisions of the final paragraph of the 4th Section of the Act of 1870, as to a tenant claiming compensation for improvements made before the Act, are applicable to such improvements in determining what is "a fair rent under 1881, Section 8."

3390. Before you give us the opinions of the judges, how did the Court go?—Six judges held that the provisions in question did affect the matter, one judge that it did not, the one being the Lord Chancellor.

3391. The Court was six to one, then, in favour of reading both the Acts together?—Reading both the Acts together; but I think all six held that the effect to be given in fixing the *amount* of rent was not before us, and was to be determined subsequently.

3392. The amount was a matter of discretion?—Yes. But limited as already explained.

Mr. *Sexton.*

3393. There is something more in it than reading both Acts together, because you are not only to read the two Acts together, but you are to read Section 4, and especially one paragraph of

Mr. *Sexton*—continued.

it, in the Act of 1870, as specially ruling Section 8, Sub-section 9?—As specially affecting it.

Chairman.

3394. That we shall understand, if you will do what you were proposing to do, that is, read the passages out?—At page 134 you will find the Chief Justice says, "With respect to the operation of the final clause in the 4th Section of the Act of 1870, it would seem that such deductions and allowances as are there spoken of should be considered in fixing a fair rent, so far as they can be regarded as elements of compensation by the landlord within the meaning of the 9th Sub-section." You will remember that "compensation" is in the Act of 1870; "fair rent" is in the Act of 1881, and therefore, wherever "fair rent" and "compensation" are mentioned together, the two Acts are read as one. Now, here is what he says: "Questions of this nature involve matters of fact rather than matters of law, and can be satisfactorily determined only when the proper elements are submitted to the constituted tribunal."

3395. This is Chief Justice May?—That is Chief Justice May. He differed with us on the other point. Now I go to Sir Edward Sullivan (page 141). There is a long paragraph; but it is all summed up on page 141: "In reference to the third question, the very considerations I have just stated" (those were about the interpretation of "predecessors in title") "induce me to think that the positive enactments as to improvements before 1870, as mentioned in the final clause of Section 4 of the Act of 1870, must still apply. The two Acts, by the express enactment in the Statute of 1881, must be construed as one; that is, as one code. The provisions of the final clause in Section 4 of the Act of 1870 are just as mandatory as those of Sub-section 9; and in the Statute of 1881 there is no declared intention of repealing it. Under such circumstances the rule of construction is that they must stand together if they can be reconciled. I think they can stand together, and that the exemption as to improvements, in the 9th Sub-section, must operate on improvements made before the passing of the Act of 1870, with all the qualifications attaching thereon." And further down he says, "If one reads the 9th Sub-section *per se*, he would at first sight be disposed to give the word 'improvements' a very wide interpretation; but when we find in the very Statute in which this word is used a peremptory direction" (I referred you to that on the first day) "that its meaning shall be taken as in the former Act of 1870, the rule is at once enforced that that interpretation must be abided by, the context not offering any obstacle." Chief Justice Morris, at page 148, as to the third question, says, "The Commissioners, in order to determine a fair rent under the 8th Section, have to regard the interest of the landlord and tenant respectively. The interest of the former is the plenary interest in the holding, save so far as the tenant establishes, in diminution, claims under the Acts of 1870 or 1881. These claims constitute the tenant's interest. What is the tenant's claim under the Act of 1870 in respect

Chairman—continued.

of improvements made before the passing of that Act?" And he then discusses that, and shows that it is "a claim to be compensated, so far as he had not been compensated by enjoyment in the various degrees of time, &c., as set forth in Section 4." Chief Baron Palles, at page 160, says, "As to the third question, being of opinion that that which has been exempted from rent is not the entire work, but the uncompensated interest of the tenant in that work, it necessarily follows that I am of opinion that enjoyment by the tenant of improvements executed before the passing of the Act of 1870, which, by the express terms of the 4th Section of the Act of 1870, is to be taken into consideration in reduction of the tenant's interest in such work, cannot be excluded from consideration in determining fair rent." He says, page 161, that the effect of the opposite view "would be to transfer to the tenant all the property of the landlord in improvements which had been effected by the tenant, notwithstanding that some of such improvements had, under the provisions of the 4th Section of the Act of 1870, become parcel of the holding, without liability upon the landlord to pay any compensation in respect of them, and that the amount of compensation payable in respect of others had been materially reduced by enjoyment. And Lord Justice Deasy, at page 1875, refers to the final clause of 1881, Section 8, Sub-section 1, about hearing the parties, and having regard to their interests; and he says, "It is impossible to frame words giving a larger discretionary power. What authority have we to limit the Commissioners in the exercise of that power without which the Act could not be carried into practical operation?" And lastly, at page 183, I venture to say, "The third question is little more than a corollary to the second question, upon what I will call the principle of uniform and consistent interpretation applied to both Acts. The final clause of Section 4 of the Act of 1870 is not repealed. Section 7 of the Act of 1881 expressly deals with rights to compensation under the Act of 1870; and no such right could escape the operation of that clause; therefore, a provision which confers no new right, but in terms only saves the tenant from the deprivation of a right otherwise conferred, cannot exclude restrictions which were concomitant upon that right from its origin. Thus if the prohibition to allow rent in respect of improvements must, as I think it must, apply only to the tenants' interest in those improvements, and if that interest is for the purpose of fixing a fair rent to be ascertained by reference to the amount which would compensate the tenant for it if he were quitting his holding, it follows that the third question must be answered in the affirmative."

3396. It was the Chancellor who was the one dissentient, was it not?—The Lord Chancellor's view is expressed in two passages; he had two strong views. Number one you will find at page 124.

3397. It is worth noticing as we pass, is it not, that of all these judges, Sir Edward Sullivan was Attorney General when the Act of 1870 was passed; Lord Justice Deasy passed the Act

of

Chairman—continued.

of 1860, and the Lord Chancellor was concerned in the Act of 1881?—I was the junior member of the Court in 1882, and certainly had reason to bow to the authority and experience of those who were there. As to Lord Justice Deasy, the Act of 1860 goes by his name, though he did not always acknowledge it. He had a great deal to do with it.

3398. And Sir Edward Sullivan had a great deal to do with the Act of 1870, had he not?—Sir Edward Sullivan had a great deal to do with the Act of 1870; and I rather think, but I cannot state that positively, that he was consulted about the Act of 1881, when that was brought in. He was not in Parliament when it passed, because it was conducted through Parliament, I believe, by Lord Chancellor Law. Lord Chancellor Law died soon after, and he was succeeded by Lord Chancellor Sullivan, under the same Government. Those three had had, therefore, remarkable experience.

Mr. *Sexton.*

3399. Sir Edward Sullivan was not in Parliament, was he?—Indeed he was; he sat for Mallow. Lord Justice Deasy had been in Parliament also in 1860, but Chief Justice May, the Chief Baron, and I, were three judges who had not had that experience.

3400. The Lord Chancellor himself, I believe, conducted through the House of Commons the Act under which he had to determine the case of Adams *v.* Dunseath?—He did; but how much it was altered in course of going through I do not know. We cannot interpret Acts by that; we have to interpret them by rules, and those rules were very much discussed in the course of this case. A good many of these clauses look like patches, if I may use the expression, and the question was whether they fitted or not.

Chairman.

3401. Will you tell us what the Lord Chancellor said?—His first view is to be found on page 124. The way he gets out of the Act of 1870, Section 4, is by saying: "This is not a proceeding under that enactment; and moreover this general direction that the Court, in fixing fair rent, shall have 'regard to the interest of the landlord and tenant respectively, and consider all the circumstances of the case,' is, it seems to me, designedly controlled and explained by the specific provision of the 9th Sub-section, which enacts that no rent shall be allowed or made payable in respect of any improvements whatever belonging to the tenant." You at once see that the point at issue was whether it was controlled and explained by that provision only, or whether it was not controlled and explained by the other provisions also; and the moment the judges came to the conclusion (as we, six of us, did) that the two Acts, as a whole, must be read together, that put him in a minority, and in a difference of opinion with us. But here is another passage which was very important. On page 125 he corroborated and supported his view by this passage: "Now it appears to me that by the first clause of the Act of 1881 all tenants throughout Ireland are in this respect placed in practically the same position as the Ulster

Chairman—continued.

tenant," and then he proceeded to deal with the case of the Ulster tenant, and to show the effect of his being entitled to free sale without taking improvements into account, which is only in the case where the Ulster custom is unrestricted. He based a great deal on that. Now the other judges met that, and it is important you should see how. In the first place, put shortly, if Parliament meant that, instead of enacting 62 sections in 1881, why did not they pass one, defining something like the Ulster custom, and saying, "All that shall apply to Ireland all over?" You observe the answer given more in detail by Sir Edward Sullivan at page 143, by Chief Baron Palles at 160 and 161, by Chief Justice Morris at 153, and by myself at page 176.

Mr. *Sexton.*

3402. The effect of it all was, that all the provisions of the Act of 1870 which related to a claim by a tenant for compensation for improvements on the occasion of quitting his holding (that is, improvements made before the Act of 1870), that those principles and qualifications should also apply when he claimed exemption in cases of fair rent?—That they should have regard to that in fixing a fair rent, that, in other words, the interest of the tenant to which regard was to be had, was an interest measured by the provisions as to compensation, but that when it was so measured, the amount of effect, in money, to be given in the particular case rested with the Land Commission. Now, on that point (I never saw this paper until last week), it occurred to me from what I saw here that it would be well for you to have the final history of Adams *v.* Dunseath. We sent it back to the Land Commission to fix a fair rent, having regard to our answers, and you will remember, I take it, from what I have already mentioned, that, in the rent of 30*l.* 15*s.* that they had fixed, they had given the landlord no credit for improvements; he had demanded the case to be stated, and he had put forward his views. I hold the final order in the case in my hand; I got it under the seal of the Court, as I thought it better to have it officially; it will give the final history of the case: On the 20th February 1883, the Land Commission (Mr. Justice O'Hagan, Mr. Commissioner Litton, and Mr. Commissioner Vernon) further heard the case; the order sets out the originating notice, the reference to our court, the five questions, and then it goes on: "And whereas the case came on again before this court upon this day; whereupon and on reading the case stated for the consideration of Her Majesty's Court of Appeal, and the order of said Court of Appeal made thereon, it is ordered that the judicial rent of the tenant's holding as fixed by the order of the Sub-commission and affirmed by this Court on re-hearing, be increased by the sum of two pounds sterling in respect of the house built on the holding by James M'Kee, a former tenant, and still existing thereon, and that accordingly the judicial rent of the said holding be the sum of 32*l.* 15*s.*" (instead of 30*l.* 15*s.*) "and that the order of the Sub-commission, bearing date the 19th of November 1881, and the order of this Commission, bearing date the 19th of January 1882, be varied so far as is requisite to give effect to this order."

Chairman.

3403. You only quote this now to show that the fixing of the rent was left discretionary?—Certainly; and to show how the discretion was exercised. You observe that they put no rent on reclamation, building during the lease, fencing, roads, or those other things. I can easily understand many reasons why they did not; but I am only speculating when I say this. There, probably, the tenants' expenditure (as is often the case with these improvements) was not more than remunerative; in that case, under the judgment, the tenant would be entitled to have nothing whatever added to his rent in respect of them; but I have passed over perhaps the most important matter of all, you should understand; that is, about the house, upon which I am stated to have reversed the decision of the Court.

Mr. *Sexton.*

3404. That is the fifth rule you are referring to?—Yes. The fifth question.

Chairman.

3405. Are not we getting, with all respect, a little out of the order of the exposition?—I am afraid so, because, I am afraid, I passed over the fourth and fifth questions.

3406. Come back, if you will; you have settled the relation of the Act of 1870 to the Act of 1881?—Yes.

3407. To that fourth question submitted to your court as to whether the tenant was compensated by enjoyment under the lease, you gave a unanimous negative?—On a very simple point.

Mr. *Sexton.*

3408. Before you pass away from the third, I should like to put a further question. I should like to ask you whether the effect of your decision on the third question was, that the Court, in considering the interest of the tenant in the fixing of a fair rent, is to treat the interest of the tenant in regard to improvements as it would treat his interest if, under Section 4 of the Act of 1870, he was seeking compensation on quitting his holding?—Yes; it is not a strict measure you are aware; but in ascertaining the tenant's interest, you are to look and see what he would get for that interest if he was quitting his holding; and that is put by Sir Edward Sullivan very clearly at page 141. "The right of the tenant to get compensation for his improvements, and his right to be exempted from rent in respect of them, being, according to my view, almost, if not entirely correlative." A man cannot be entitled to sell one thing and possess another, that would be depriving the landlord in one case of rent for the thing he would get for nothing when the lease was over; and on the other hand the tenant might by improvement and increased letting value diminish the landlord's rent beyond what the landlord's interest was worth. There is no doubt (I think I have said that before) that the subject-matter of compensation, by reason of these two Acts being read together, is a guide to the subject-matter of the interest.

Chairman.

3409. Now, on the fourth point, whether you were unanimous in saying that the tenant was not compensated by enjoyment under the lease?—We were unanimous that if a tenant takes a lease for a term at a fixed rent, that that rent represents the price of the entire enjoyment of the place during the term, and that no profit derived from that can be treated as compensation "by the landlord." The landlord has got his price for the whole term in his rent, and therefore enjoyment under a lease is not compensation by the landlord; of course that is express "compensation by the landlord," as distinguished from a thing to be taken into account on the last clause of the 4th Section. The Court was quite unanimous on that point.

Mr. *Sexton.*

3410. That the rent pays the landlord for the inherent capacity of the soil as well as everything else?—During the lease, but only during the lease; the way that arose in Adams *v.* Dunseath was, because it was stated on the case that, in fixing the rent of this holding in 1845, they had thrown out all consideration of improvements, house and everything else.

Chairman.

3411. You were going to tell us about the house, that is what made me interrupt you; that point was raised on the fifth question submitted, was it not?—Yes.

3412. Did the lease preclude the tenant from being regarded as having any interest in the house before the lease was made?—This was the only one of the five questions that was a specific question dealing with the particular facts of this individual case, and it was: Does the lease of the 2nd March 1846 preclude the tenant from being regarded as having any interest in the house for the purpose of these improvements?

3413. The house having been built before the lease?—Yes, the house having been built before the lease; on that point it is right to tell you, that no Judge in the Court held that the tenant was entitled to have that house rent free, or treated as his; what three of them did say was, that he was not *necessarily* liable to rent for it.

3414. He might, or he might not?—He might, or he might not, according to the view taken of the transaction; I want to make this perfectly clear, because I have been stated to have reversed the decision of the whole Court. I want to show you what really happened.

Mr. *Sexton.*

3415. The position being this, that you spoke last, and the Judges were three to three when you spoke?—As Junior Judge, I came last. There has been a misapprehension about the judgments of the others, if I may be permitted to say so. At page 129, this is what the Lord Chancellor says: "Whether the transaction ought to be differently viewed depends now on its substance, not, as before, upon its mere form; and in this case if the Court, after due investigation and full consideration of all the circumstances under which this particular change of tenancy took place, came to the conclusion that the lease was in fact given in consideration of

Mr. *Sexton*—continued.

of and as compensation for the building of the new dwelling house, then of course the present tenant should not be regarded as having any claim in respect of it, or as entitled to object to rent being allowed for it. This, however, is a matter of fact for the Commission to deal with, and not one of law, on which we can pronounce any definite opinion beyond this—that there is nothing in the lease, as I conceive, to exclude the application of Section 7 to the house built before its execution." Nothing can be clearer than that. Sir Edward Sullivan on page 145 says: "As to the operation of the lease of 1846, this is unquestionably a point of much practical moment. It has, of course, all the recommendation of a new and safe starting point as between landlord and tenant; but I must confess I cannot think that by itself it bars the tenant's claim." And he says further down: "The Land Commissioners must, I admit, carefully review the whole state of things accompanying the change of tenancy, and rule upon it. It would, of course, be of the utmost moment to get a starting point, but this must and should be one clear and safe beyond any doubt." Chief Baron Palles on page 164, goes through all the facts and then he says: "These are the only facts in relation to this question found by the case, and it is to be remembered that by the section of the statute under which this case is stated, our jurisdiction is to determine questions of law *only*. We are not at liberty to assume facts, or even to draw an inference of fact from facts stated in the case." Now my view may be put shortly. Before I go to that, you will observe that the other three Judges had held that all the improvements made before the lease were excluded, and therefore they had nothing more to say about the house. The house was out, in their view, on a nother ground altogether.

3416. By a new tenancy?—Yes, by a new tenancy; therefore they did not discuss this matter at all.

Chairman.

3417. They answered that question on the same ground as that on which they had answered No. 2?—Yes, they had got their view laid down in the case of Holt *v.* Halberton, and therefore they had nothing further to say on this point.

Mr. *Sexton.*

3418. Their answer to No. 2 answered No. 5?—Yes, but the other three (whose judgments I have read) held that this lease did not necessarily exclude the tenant, and my view that it did turned on the point: What effect was to be given to the word "only," in 1881, Section 7.

3419. By Section 7 of the Act of 1881?—Yes, I would like to read this passage, because it puts this beyond all doubt; page 168. The Chief Baron knew perfectly well what he had to answer, and what my judgment was, for we had discussed all this case together. "It may be said, and I have no doubt will be said" (he knew what was coming) "that in this construction I am giving no effect to the word *only* in the section, 'the tenant shall not be deprived of his right by reason *only* of the determination of the tenancy.'

Mr. *Sexton*—continued.

I answer, that effect may and ought to be given to the surrender of the new tenancy, but only as one of several circumstances all material upon the question of accord and satisfaction." And in the last paragraph on that page, he says: "I wish it, however, to be distinctly understood that I give no affirmative opinion that the tenant *is entitled* to compensation for the house. Before doing so I should have the determination of the Commissioners upon the matter of fact that the lease had not been executed in satisfaction of the claim."

3420. They held that the lease settled nothing, one way or the other?—That it was possible he might have it, but that it was for the Commission to say whether he was or was not entitled to compensation. Finding that the landlord had paid 6,000*l.* in 1851 for the estate, subject to 30 years in the house, and finding that the tenant in 1845 had only bought 30 years in the house for 260*l.*, I came to the conclusion that the landlord had bought the house from 1875 out, that the tenant had never bought it, and that it represented so much landlord's money, and no tenant's money; and I held that that lease of 1846 was, under the circumstances, a new starting-point; I was strengthened by some other sections that I think have been referred to already, 1870, Section 4 (1) *c.* as to "valuable consideration," and Section 5 (1) as to improvements made before an actual sale of the landlord's interest; and the landlord here had got what he imagined to be a Parliamentary title; he bought it in the Encumbered Estates Court, in 1851, subject only to the lease for 30 years; and that was the ground on which I thought this was not a case of change only in the tenancy, but that the circumstances were such that in the particular case the particular tenant was not free from rent on the house. It was sent back; I apprehend that they must have considered that the landlord's interest was not the whole value of the house; for they added 2*l.* to the rent in respect of the house.

Chairman.

3421. Your decision was grounded entirely on the special circumstances of the case?—Yes. At page 189 I said, "I wish to guard myself against resting my opinion either on the terms of the lease alone, or only on the contemplation of the building by the parties when the lease was granted, but both these elements concurring seem to me conclusive, as well as to the form, as also to the substance of the transaction, creating the leasehold tenancy in 1846, and mark the lease as the terminus of all the tenants' rights in this case."

3422. You have done now with the five questions?—I have, unless there is any other question you wish to ask.

3423. It would appear from the evidence we have had, that the Land Commission are quite aware that the general principle of the decision of Adams *v.* Dunseath in favour of the tenant, is not qualified by the decision as to the house which turned entirely upon the special case?—I found a reference at 853 to the case of Walsh *v.* Limerick.

Chairman—continued.

3424. We have had that before us?—I gather from that, as is sometimes the case, the Sub-Commissioners misapprehended the matter for a while, and the Land Commission have set them right. The facts of the case were, I think, what the decision as to the house turned upon in Adams *v.* Dunseath; 2*l.* were added to the rent, and that is the end of the case, so far as I know.

Mr. *Sexton.*

3425. May I ask you one question as to the general effect of Adams *v.* Dunseath, on the administration of the Land Laws; the scope of the effect? The court, as I understand, taking up five questions sent up to them, which had relation merely to the facts of the particular case evolved, as the phrase is. (I believe the Master of the Rolls was the agent in the case) five general questions of law, or at least four general questions of law, and one which is formed as particular, and the decision of the court upon these five questions laid down general principles which have once applied generally, I believe, and without any further revision, up to the present time in the administration of the Land Acts?—Adams *v.* Dunseath stands as it did in 1882, at the present time. We have never had any other case exactly on the same matter. We have had a couple of cases since, bearing on the same question, but not directly.

Chairman.

3426. Would you draw any inference from the fact, that though the Act of 1881 has been amended by the subsequent Acts of 1885, 1887, and 1891, no alteration has been made as to the principle of fixing rents?—It is a principle of interpretation applicable to statutes, if there are decisions on statutes, and subsequent Acts of Parliament are passed dealing with the effect of those decisions, partially; that the portions that are not so dealt with are supposed to be accepted or affirmed. It is exactly the same as if a man makes a codicil to his will: except so far as he alters it, he affirms it; and we have had several statutes passed: one about assignment, one about town parks, one about sub-letting, and others, but we have not had any yet about the question of compensation for improvements.

Mr. *T. W. Russell.*

3427. But would it not be possible, seeing that the judicial period was for 15 years, when a great question like that involved in Adams *v.* Dunseath was settled, that it should be not allowed to run its natural term, and that Parliament might be expected to interfere with it before the expiration of the judicial period?—Parliament's power of interference, of course, is perfectly unbounded, but I apprehend that if there was anything wrong in the principle of Adams *v.* Dunseath, I mean wrong from the Parliamentary point of view, the tenants whose rents have been fixed under it for 15 years, would have just as much right to complain as others. On that point, I do not see in the Act anything about a 15 years' term excepted incidentally. I understand the position to be this:

Mr. *T. W. Russell*—continued.

The rent is fixed for 15 years, and it goes on until it is altered; it cannot be altered during 15 years, but the tenancy continues, and cannot be determined. After 15 years the rent is capable of revision; but if it is not revised, I suppose it goes on as before; do you see what I mean?

3428. It is wrong to talk about a "15 years' lease" you mean?—It is not a 15 years' lease; it is a lease for ever, that is to say, it is an undeterminable tenancy from year to year, with power to fix or to vary the rent every 15 years; but I have had nothing to do with this in practice; I apprehend a tenant might go on paying the same rent for 17, 18, or 30 years if he likes; he is not bound to go in for revision after 15 years, or at all.

Mr. *Sexton.*

3429. Potential tenure of a "present tenant," in Ireland, which is not new, is the right of perpetual occupation subject to a rent periodically revised, and to the Statute of Limitations?—This idea of the 15 years' term has turned up before me on circuit, and I have always held it to be entirely a mistake, for example, about allowing enough turbary to last for 15 years, and things of that kind; that is not the view I take of the Act, or, as I believe, the view taken by other Judges. The term of 15 years is only the term during which the rent cannot be altered.

Chairman.

3430. Of course the action of Parliament is intelligible upon this point, that, as no revision was possible until the expiry of the 15 years, Parliament might lay down so-and-so?—Of course; but there are very many tenants whose term does not run from the date of the Act at all; it is only those who came in "on the first occasion" that will be able to apply again at the end of the first 15 years. The leaseholders have only come in since 1887, or when their leases expired; and we have very often had cases coming before the Court of Appeal in which ordinary tenants from year to year have only come in lately.

Mr. *T. W. Russell.*

3431. Forty-five thousand will be entitled to serve originating notices next year?—Those will be originating notices to vary rent.

3432. Yes?—But please bear in mind it is not to alter their tenure.

3433. Oh no; perhaps I spoke loosely when I talked about a 15 years' lease; I quite accept what you say?—I know the idea of many people I have met with in litigation is that there is a 15 years' term; in my opinion, there is not.

Chairman.

3434. I interrupted you when you were going to tell us about two cases in which the principle of Adams *v.* Dunseath was applied?—There are two cases in which the principle of reading the Acts together turned up. The first of them was Massareene *v.* Kelly, 13th February 1890, which governed a number of cases. Lord Massareene evicted a number of tenants, I believe for

Chairman—continued.

for non-payment of rent; they then came in with a claim for improvements. Lord Massareene said, "No, you have got the right of free sale, and because you have not sold, you have lost the opportunity of creating a fund out of which I could get my rent, and you could get the price of your improvements." The Court held that he was wrong, that the Act of 1870 was none the less in force because the Act of 1881 had been passed also, and that the right under the Act of 1881 was not a satisfaction or a substitution for the right under the Act of 1870, and accordingly the claims were affirmed in the particular case before us. The note I have is that Kelly's claim was for 118*l.* 14*s.* 1*d.*; therefore, for evicting him for non-payment of rent, the landlord was obliged to pay 118*l.* 14*s.* 1*d.*, although the tenant (it was contended) might have sold his holding, and the landlord might have stopped his rent out of it.

3435. In other words, both remedies were there?—Both remedies existed.

3436. The tenant could have sold, or he could say; "I will go, but I must have compensation"?—You will see arguments put in Adams *v.* Dunseath, that the reading of "improvements" in the Act of 1881 alone might have injuriously affected the tenant, but reading the Act of 1870 along with it operated in his favour in Massareene *v.* Kelly long after. The other instance of that sort is a more curious case still, if possible; it is a more recent case.

3437. Was it decided on that authority only?—It was decided on that point; it was the case of O'Kelly *v.* Kelly, a tenant in a place called Clongorey. The tenant had put up certain buildings, or allowed certain buildings to be altered rather, for purposes which the landlord thought waste, and an injunction was got in Chancery against the tenant to restore the buildings to their original condition. The tenant did not obey the injunction, and the landlord then served notice to quit, under the provision in the Act (this was a judicial tenant), that a judicial tenant, guilty of persistent waste, may be evicted on notice to quit. An ejectment was brought, and the case was tried in the Exchequer, and there was judgment for the landlord. It was found that there was persistent waste, and therefore there was judgment for the landlord, to recover the premises from the tenant, which he did. The tenant then lodged the claim for compensation for improvements. I have not got the figure, but I think it was something about 300*l.*, a smart sum. The Land Commission, under the 18th section of the Act of 1870, took 12*l.* off the tenant's claim for improvements, finding that that would be enough to put the buildings back into the condition in which they were. The landlord applied then to have the claim for improvements either disallowed altogether or further reduced, by reason of unreasonable conduct on the part of the tenant, in this persistent waste, and in refusing to do what the Court of Chancery directed, and so forth. The Land Commission refused to make any further reduction, and the case was brought to us on appeal, and we held that it was entirely in the discretion of the Land Commission how much they were to reduce

Chairman—continued.

or to disallow, or what effect they were to give to the "unreasonable conduct," and that they were within their right in saying that if the landlord got what would put the place back into the position in which it ought to have been, the tenant losing (as she did lose undoubtedly) her judicial tenancy, they were, in the exercise of their discretion, entitled to hold either that that was not unreasonable conduct at all (though I think we were rather doubtful on that), or at all events that 12*l.* was enough to compensate for it, and the claim was allowed and the appeal was dismissed. That was on the 1st May, 1894. That turned also you see on the same point—how far the rights of a tenant falling back on the Act of 1870 are affected by his having other rights got under the Act of 1881; and we held in fact that the benefits that the tenants get are cumulative, and that they can take their choice: as they are cumulative they cannot have both, but if they have rights under one Act they are not deprived hereby of rights under the other. Those are two cases. There was another case (I forget at this moment the name of it), in which the landlord wanted a deduction from the rent because a drainage loan had been expended upon the place. We found that the amount of the instalments had been added to the rent—and we held that thereby it was not paid for by the landlord, and was not to be taken into account to increase the rent. Cases of that kind turn up.

3438. Now we will leave this great case—on which you have certainly thrown a great deal of light—and go back to one or two very important heads that still remain; and I think one of the most important is the point about the status of the tenant on title?—You would rather take that branch next?

3439. I think so; I think that is all we shall be able to do?—That is the supposed infirmity of title to judicial tenancies.

3440. The foundation of the whole jurisdiction under the Act is that the relation of landlord and tenant is a subsisting relation; we have been told that?—I am almost afraid I must be a little elementary about this.

3441. Do, please?—The Land Commission, from the lawyer's point of view, is what is called "An Inferior Court." That is not in any way derogatory, but it is a perfectly defined and known thing; an "inferior court" for our purpose is a court with a limited jurisdiction, liable to be controlled by a higher court if it goes outside its jurisdiction.

3442. A court not "inferior" is presumed to understand its own jurisdiction?—Orders of superior courts imply or infer jurisdiction, and until they are set aside by regular known proceedings, they stand; in other words their jurisdiction is assumed. In the case of what are called technically "inferior courts" the court is bound in the first instance to see that it has jurisdiction, and if it acts without jurisdiction its orders may be examined and will not stand. In that sense the court of the Land Commission is an "inferior court," and it has long since been laid down, and is, I think, indisputable, that the foundation of its jurisdiction is the relation of landlord and tenant between two parties who come before it.

Chairman—continued.

3443. We may say this, though, may we not, that the question of the existence of jurisdiction depends upon a question of fact?—Not always. That again I must try to make clear. Where the question whether an inferior court has or has not jurisdiction depends, in any given case, on a question of fact; the inferior court is within its jurisdiction in inquiring into and determining that fact, otherwise business could not go on at all.

3444. The inferior court determines whether there is legal evidence before it setting up a state of facts which gives them the jurisdiction?—They may ascertain the fact which gives them the jurisdiction; but a limit still remains. If the fact is determinable as a matter of law, so that it legally appears that there is no jurisdiction, in that case, of course, the order cannot stand. Similarly (but it is only a corollary to that) if there is no legal evidence of the fact, the case is the same; if there is no evidence of the fact, the order will not stand; but where the jurisdiction depends on determining a matter of fact on which there is evidence either way, or legal evidence in favour of the jurisdiction, the court of inferior jurisdiction is exercising its power, and is capable of binding the parties by its decisions when it determines the fact exists, and if I have made that clear I think all these cases that have been referred to will at once become intelligible.

Mr. *T. W. Russell.*

3445. So far as I am aware, we have only had one case, bearing on this point, quoted before us. It is put down that there has been a tremendous exclusion from this Act by holding that it did not bind people whose estates were not before the court; that is a question of limited owners, is it not?—Yes, that is what I am on. This is no new question at all.

3446. First of all, I do not think you should say that any witness has said here that there would be a "tremendous exclusion." What has been said is that there is a possibility of exclusion, that there have been exclusions, and that there is a possibility of more?—I was not referring to a witness, because it is only just to say, with regard to witnesses, that a good many things appear in questions that are far beyond what are in the answers. I was referring to a question in which a "tremendous exclusion" was spoken of, I think; but large or small, I will show you exactly what the exclusion is. It is no new question at all; it was discussed in Hemphill *v.* Frazer, in 1882; that case did not come to the Court of Appeal, but it has been cited in the Court of Appeal often.

Chairman.

3447. It is the same in principle as a case of which we have heard a good deal, Peyton *v.* Gilmartin?—Yes, it is precisely the same, but nine years before. In Hemphill *v.* Frazer the tenancy was at an end before the Act of 1881 passed, and the tenant had only got the right of "emblements" as it is called. Whether he was a tenant or not, depended on a matter of law, and a matter of law only. There was no dispute about the fact. The Land Commissioners fixed a fair rent, and the Court of Common Pleas held that they could not do that, because he was not a tenant, and the case was outside their jurisdiction altogether.

Chairman—continued.

Mr. *Sexton.*

3448. That they had misunderstood the law, in fact?—No, but that they had tried to fix a fair rent between two people who, in point of law, were not within their jurisdiction.

3449. They supposed the law allowed them to do it, but the law did not?—The law did not; they were not landlord and tenant, they were a landowner and a person entitled to emblements; that is, a man who had ceased to be tenant and had no longer any right to the land, except to go back to cut his crops; it did not turn on any disputed matter of fact at all. The state of affairs was perfectly ascertained at the beginning of the Act. The very same point turned up with us in a very strange way in Kelly *v.* Rattey long after—32 "Law Reports" (Ireland) page 445. You will find, as I have explained already, that the successive Acts admit one class of tenants after another, but tenants they must be all through.

3450. Leaseholders?—Leaseholders first; then fee-farm grantees.

Mr. *T. W. Russell.*

3451. Kelly *v.* Rattey was under the Redemption of Rent Act, was it not?—It was; the question was whether Kelly was to be deemed a tenant. What we decided under the Redemption of Rent Act was that it, as well as all the rest, dealt only with cases where the relation of landlord and tenant existed. There has been a good deal of confusion about Kelly *v.* Rattey. We have in Ireland a well-known tenancy called renewable leases; those people are undoubtedly tenants. There is a Statute which enables them to turn their leases into fee-farm grants, and there is no doubt, as far as I know, that a grantee, holding under one of those fee-farm grants, would be a tenant within the meaning of the Act of 1891, though it is a very untechnical expression. In Kelly *v.* Rattey what had happened was that a person, who was not a tenant at all before, had got a grant for ever, in 1846, before Deasy's Act of 1860, which made the relation of landlord and tenant depend on contract. We could not hold Kelly to be a tenant if we were not prepared to hold every limited owner who is bound to pay a jointure, or a rentcharge, to be a tenant also. There was no relation of landlord and tenant; there was a mere rent issuing out of land for ever, and we held in Kelly *v.* Rattey, on the same principle as in Hemphill *v.* Frazer, that because the relation of landlord and tenant did not exist the case was not within the jurisdiction of the Land Commission. That was the decision, and the only decision there.

Chairman.

3452. You desire to say something about the case of Bruce *v.* Steen, do you not?—Yes; the jurisdictions are concurrent in cases of this kind; either the landlord may bring his action of ejectment and try his right to the possession, or the tenant may go into the Land Commission Court and may apply for his fair rent. Whichever jurisdiction attaches first will ultimately bind

Chairman—continued.

bind, subject to some special provisions for enabling the tenants to be reinstated in the holding up to the time of actual quitting. Either Court can inquire into the facts. If there is a judgment in the Common Law Court, that binds, provided there is no fair rent order before that time. If, on the other hand, there is a fair rent order, that will bind, provided the Court has been acting within its jurisdiction in determining whether the case is one within its jurisdiction or not; and you will find a case of Bruce *v.* Steen in "Cherry," at page 301, showing the limits of the jurisdiction; but above that there is the case of Johnston in "Cherry," at page 300, that puts the thing as plainly as it can be put. This was a case in which the landlord applied for a prohibition, treating the Land Commission as an inferior court, and trying to reopen the question, where there was the relation of landlord and tenant, whether the holding was within the Act or not. "I am clearly of opinion," says the Chief Baron, "that the Land Commission had jurisdiction to ascertain and determine the terms of the tenancy, and that even if the evidence which has now been brought forward (so far as it appears for the first time) showing, as I have already stated it conclusively does, that the tenancy was not a present one, had been before the Sub-commission, and if the Sub-commission, notwithstanding that evidence, held that it was a present tenancy, and fixed a fair rent upon that basis, it would not be open to us to substitute the decision which we think they ought to have made, for the order which in fact has been made. All that we can do, when their decision is complained of, is to see that the case was one within their jurisdiction; and, having done so, our functions cease." Now that is the language of the head of the Superior Court, to whom application was made to prohibit the Land Commission, in a case in which they had come to a conclusion on a question of fact, which the Superior Court thought was wrong; but it was decided by the Court below within their jurisdiction, and that being so, there is no power to touch it as to any person whom it binds.

3453. The title of the tenant is not changed either for better or for worse, is it?—The tenant's title, after his rent is fixed, is never, in any part of these Acts, referred to as affected at all. The landlord is prevented from serving the tenant with notice to quit, and the rent is fixed; but the tenancy (the holding) is the same; you will please remember the definition, the "holding," rests on a "contract of tenancy." Well, the effect of that is this, that the order fixing a fair rent binds everybody whom that contract would have otherwise bound, but it does not bind anybody who is not before the Court, or who would not be bound by that contract You will find on this point that Hemphill *v.* Frazer and Peyton *v.* Gilmartin are identical, and I ask leave to give you one quotation from each. With all respect, I think the question of infirmity has been not quite yet understood. In Hemphill *v.* Frazer, would you let me read to you from Mr. Justice Lawson: "It was, however, argued, though not very confidently, that the decision of the Sub-commissioners, made on the 19th of December, 1881, was a decision *in rem*, and was

Chairman—continued.

binding upon this Court, and defeats the right of the plaintiff to recover in this ejectment brought on the 9th November," page 93 of 10 "Law Reports," Ireland. Judgment "*in rem*" means a judgment that binds a certain piece of property; it is a well-known branch of the law, but perhaps the best illustration I can give you is from Admiralty Law. A leading case is "The King (I think it was George III.) against Forty-nine Casks of Brandy"; that is the name of the case. It settled all the law about jetsam and flotsam, according to the different positions in which these things lay. Those are judgments which bind a property and settle it as against all the world. There are similar judgments as regards land in certain cases; but I know no case in which a judgment *in rem* can ever be pronounced, unless precaution is taken to bring all parties before the Court, or to have them represented, whose property is likely to be affected. Accordingly, in Hemphill *v.* Frazer, Mr. Justice Lawson says that this was a contention practically to give Parliamentary title to tenancies from year to year. He says: "That would lead to this result" (the same, page 94), "that if a person not a tenant at all succeeded by fraud or mistake in representing himself as a tenant, to the Court, the person whose estate was thereby affected would have no redress, just as in the case of the Landed Estates Court selling a person's estate by mistake; and counsel was obliged to admit that the argument must be pushed to that length. It is scarcely possible seriously to contend for such a proposition, in the absence of words in this Act giving the effect of a Parliamentary title to the decisions of the Commissioners, or of words giving them exclusive jurisdiction, and ousting the jurisdiction of the Common Law Courts." That case was in 1882. In 28 "Law Reports," Ireland, page 378, the very same point arose in Peyton *v.* Gilmartin. I do not know whether you know that Gilmartin, the defendant in Peyton *v.* Gilmartin, was the tenant. A judicial rent had been fixed on the holding, the landlord sued for it, and the tenant put him at arm's length, and said: "I am not your tenant at all; there was a judicial rent on this holding; but I am not bound by the order, and I will not pay you." And it was held that he need not, because the plaintiff did not claim through the landlord who had fixed the judicial rent; and, therefore, the order was not binding *in rem*, and he enjoyed his land, put the landlord at defiance, paid no rent, and left the landlord to look for his land or his money in some other way; but it raised the very same point. It was contended (page 384) by the present Lord Chancellor, almost quoting from the Hemphill case, that the statutory term "operates *in rem*, and is good against all remaindermen." Mr. Justice Holmes gives a very learned judgment on the matter, and he points out that if you are going to give this effect to proceedings between A. B., landlord, and C. D., tenant, you must make some express provision binding or protecting those who have paramount interests. The modes in which these tenancies are created are very numerous. If any owner in fee creates a tenancy from year to year, he may settle the estate afterwards, but the tenancy from year to

Chairman—continued.

year overrides everybody. If the settlor had an absolute estate, the tenants for life, remaindermen, and all claiming through him, are bound by the tenancy from year to year, nobody can turn out the tenant, and the tenancy will affect them all, whether the rent has been fixed or not. Again, as to limited owners claiming under settlement, every well-drawn settlement has a power to create tenancies, but always safeguarded by requiring the best rent, and so forth. In this case, if created within the power, it will bind the estate, and notice to quit cannot be served. Another case put is the case of a mortgage. Mortgages generally contain provisions for letting, carefully guarding that the mortgagee is not to deprive the mortgagor of his security for his getting his money; therefore you will find receivership deeds and things of that sort deal with it; but if the mortgagor is left by the mortgagee in possession, and he lets away the land, possibly fraudulently or taking a fine, the mortgagee is not bound, unless there is a power to let. Those are really the limits, and it is only to cases where an ordinary tenancy from year to year would not bind the plaintiff's estate that Massy *v.* Norse, and cases of that sort, apply.

Mr. *Sexton.*

3454. If any of these people pass beyond the powers of their limited ownership, the tenants innocently suffer?—They may innocently suffer, just as everyone will innocently suffer who takes a bad title. I could not give a better instance of that than the case of Moylan *v.* Finch, 28 "Law Reports," Ireland, page 595, because the landlord there, having no power to make the lease, made a lease, and I believe he took a fine. Before taking the lease, the tenant, as anybody else could have done, could have found out what his title was. It was held that, the lease being for Finch's life, the tenant could not, on the expiration of the lease, be "deemed to be a tenant from year to year," because he would have had no claim under Massy *v.* Norse against the remainderman, and therefore he could not fix a fair rent. But, on the other hand, the very same landlord (Finch) let for 35 years to another man in Looby *v.* Finch, and there we held that the tenant was entitled to fix a fair rent against Finch, that would last during Finch's estate, because he might not die within the 35 years, but he would have to take his chance when the remainderman came in. That case is in 30 "Law Reports," Ireland, page 568. It is only right to say (you understand it now) that no infirmity will attach to a statutory tenant that would not equally attach to a tenant who had not fixed his rent; and statutory tenants have this additional great advantage, that in certain cases, such as Seymour *v.* Quirke, they get in upon estates that previously were not bound by their tenancies at all.

Chairman.

3455. In Seymour *v.* Quirke it was decided, was it not, that the tenancy attached under certain circumstances to lands that were previously not affected by tenancy?—Yes, but that is another branch altogether; that is a tenancy attaching by virtue of the special provision of the 15th Section of the Act of 1881.

Mr. *Sexton.*

3456. But it does appear after all that the statutory term and the rights of a present tenancy may be destroyed by reason of a slight infirmity?—The tenant may have as bad a title to a judicial tenancy as to any other; but if you attempt to give him a better title to a statutory tenancy than to any other, I am afraid you had better take care that you do not bring in all the expense and complication of the landed estates procedure, because I do not think you could ever make a tenancy from year to year that had a judicial rent fixed binding upon people whom the previous tenancy did not bind without making some provision for their protection. The simplicity of the proceeding is its vital essence, I would say; and probably the cases to which Massy *v.* Norse and that class of cases apply are infinitely small; but you cannot bring them in without introducing a new system of investigation of title altogether.

3457. May we put it in this way, that the only cases in which a fixed tenancy would not prevail against subsequent landowners are cases where the persons creating it had no power to bind the successors?—Precisely; you may take it that the title to the statutory tenancy binds everybody who would be bound by the title to the tenancy on which the rent is fixed, but nobody more, except in special cases.

3458. Unless the successor had a right to get the land free of any tenancy?—Free of any tenancy, or rather free of that tenancy.

Mr. *T. W. Russell.*

3459. Do not you think, in a country where there are so many limited owners, this is rather a serious position to the tenants?—I think I have shown that there are comparatively few limited owners, so far as I know, to whom that would apply. Nearly all Ireland is covered with tenancies from year to year which date back long before the lands were in settlement, and in such cases the title would override everybody, but I do not know; I cannot discuss consequences; I only point out to you that there is a very serious difficulty on each side. If you attempt to give a better title to those tenancies than to others, it will be necessary for you to make such provisions for making title, that probably the game would not be worth the candle. That is for Parliament, not for me. I have been explaining to you, and hope I have made clear, what the limits of all this alarm amount to. Mr. Justice Holmes, in Peyton *v.* Gilmartin, exactly expressed my opinion when he said, 28 "Law Reports," Ireland, page 394, that the principle on which his judgment was based "has the effect of confining within very narrow limits the 'little revolution' to which Mr. Walker (the present Lord Chancellor) referred" in that case.

Chairman.

3460. There are two or three exceptional cases as to conditions of leases, are there not, which are applicable to a tenancy from year to year, such as Bolton *v.* Barry?—There are some very curious cases on that. I would go back for a moment. The 21st Section of the Act of 1881 provides that the leaseholder shall fix his fair rent

Chairman—continued.

rent subject to the conditions of his lease, so far as applicable to a tenancy from year to year. The 1st Section of the Act of 1887 contains exactly the same provision, it repeats it; and the Redemption Act of 1891, Section 1, preserves the conditions of the fee-farm grants, and enacts that the grantees are to be deemed to be tenants from year to year. We have had a number of cases in which we could not hold that the lessee would be deemed to be a tenant from year to year at the expiration of his lease. Perhaps the most important for you (I have mentioned Moylan *v.* Finch already) is Barton *v.* Atkinson. Barton *v.* Atkinson is another instance, as you will find, very common in these cases of ours of a tenant in a good position in life. He was Major Barton of Straffan, and he got a lease from a limited owner for a certain term of years if the owner should so long live.

3461. Thirty-five years, was it not?—Yes; it was shown that the limited owner had no power to make a lease; and inasmuch as if the "so long lived" dropped, the tenant could not be deemed to be a tenant from year to year to the paramount owner, we held that he could not fix his rent. The Land Commission reversed the Sub-commission. It was a lease for 35 years by Atkinson, who had no leasing power, if he so long lived; inasmuch as if he died within 35 years, the lessee would not be deemed to be a tenant, we had to hold that he did not come within the Act of 1887. Then there are cases on the applicability of conditions; Bolton *v.* Barry is an instance.

Mr. *Sexton.*

3462. The man was never a tenant in that case?—He was a tenant under a lease; he held through a lease. The only point was that he could not come in under the Act of 1887, as being a man who, if his lease expired, would be deemed to be an ordinary tenant from year to year. I explained that the other day. Under the Act of 1887 he must be a man who, if his lease had expired, would be deemed to be a tenant from year to year to the then landlord. Barton would not be deemed to be a tenant from year to year if his lease expired by the death of the lessor, Atkinson, because the lessor, Atkinson, had no power to keep him out of Massy *v.* Norse. There is another very curious case (Sproule *v.* Ramsay) where a lessee had got a lease in reversion; he had a lease in possession and a lease in reversion subsequent to that. We had to hold that he could not fix a fair rent, because, if his lease expired, he would not be deemed to be a tenant from year to year; he would be actually tenant under the reversionary lease; therefore, he did not come within the words of the Act of 1887. Then comes this point about conditions. These things may look like refinements, but they are, every one of them, decided under the express words of the statute. We have to interpret the statute according to its words. If you want to alter the statute, you can do it; we have to construe it according to ordinary rules of construction. Now, then, conditions applicable to tenancies from year to year are preserved. Bolton *v.* Barry is a good instance of this; there are several others, but I will take Bolton *v.* Barry. There is O'Connor *v.* Smith, and Tighe *v.* Clements also; but time is running on, and I will only give you the first case. The tenant, on getting his lease, lodged a sum of money with the landlord as security for the rent of the last year of his tenure.

Mr. *Sexton*—continued.

Chairman.

3463. This is Bolton *v.* Barry, is it not?—This is Bolton *v.* Barry. He anticipated the end of his lease by coming in under the Act of 1887, and the contention was (I think this arose in the Queen's Bench) that this lodgment was available to pay the last year's rent of the lease, but not of the tenancy from year to year. We held "No, it is a sum lodged by way of security for the last year that the tenant holds, and if the tenant turns himself into a tenant from year to year under the statute, it isnot inconsistent with that tenancy that the same security should remain in the landlord's hands until he goes away; that is to say, that the security which the contract provided should remain in the landlord's hands to the end of the tenancy. That was the decision, but there are several others of the same sort. The question in each case is often a difficult one; you will find them all in "Cherry" at page 372. There are some consistent, some not consistent; for example, the covenant to give up is not consistent, the covenants regulating the use of holdings are consistent; penal rents for certain modes of cultivation are consistent. The question in each case is whether a tenant from year to year can hold on the condition that was attached to the lease. I do not think I need go further into that.

Mr. *Sexton.*

3464. The landlord was to hold the money until the tenant actually was leaving?—The lease, of course, assumed that he would leave at the end of the lease; then he turned that into a tenancy from year to year, and we held that the substance of the thing was, that the landlord was always to have a year's rent in hand as security for the year when the tenant should be going away, and there is nothing inconsistent in a tenant from year to year lodging money in that way.

3465. Was the money lodged with the landlord before the tenant acquired the legal right to compensation for improvements?—That I cannot tell you, nor would it affect our judgment. Before admitting the tenant to the holding, the landlord agreed and the tenant consented, that a certain sum of money should be deposited with the landlord as security for the last year's rent. The way it would work would be that the tenant would not pay his last year's rent at all, and that the landlord would set it off against the lodgment when the tenant was leaving.

Chairman.

3466. Tighe *v.* Clements; will you give that case?—Tighe *v.* Clements is similar. A tenant was bound, when he anticipated the end of his lease, by conditions as to allowances for improve-

Chairman—continued.

ments. There is one very strange case where a landlord wanted to resume for a home farm.

3467. Is this Tyrrell *v.* Connolly?—This is Tyrrell *v.* Connolly. The landlord wanted to resume for a home farm, but the Act of 1887, Section 1, last clause, provides that he is not to resume in the case of a tenancy under that section until after 15 years, and because the tenant came in under the Act of 1887, and fixed a fair rent, and was deemed a tenant from year to year, we were obliged to hold that the landlord could not resume at all for 15 years.

3468. The landlord desiring to resume the home farm could not do so for 15 years after the lease was deemed to have expired?—Yes, because there is a provision in the Act that the power of resumption is not to be exercised for 15 years after the lessee becomes tenant from year to year.

Mr. *T. W. Russell.*

3469. The Act of 1887?—It is in the Act of 1887, Section 1, last paragraph.

Chairman.

3470. There remain two or three points which you can easily cover in the remaining time at our disposal where you left off last Friday. Take first the expression as to *bonâ fide* occupation, some cases arose upon that?—No leaseholder can fix a fair rent unless he is in *bonâ fide* occupation. Many questions have arisen as to what *bonâ fide* occupation is. For example, several people break up a holding among them, but they do not alter the estate. They all remain liable to the whole rent; it is a common state of affairs. Two judges, I think in the Exchequer, decided that no lessee was there *bonâ fide* in occupation of the entire holding. The Chief Baron said, Yes, they all made what he called a "conjunct" tenant.

3471. All these men joined together made a "conjunct" lessee?—A "conjunct" lessee, because they were all liable to the landlord. We held he was right; there was no reason why they could not hold in "Co."; and the lessees, as a body, were in occupation, and because each of them was liable to be sued or distrained for the whole rent, we held that, as a body, they were in occupation, and we affirmed his view. There is a similar case (I was in a minority of one upon it for the landlord). The landlord had from time to time taken up parts of the holding; all the rest had remained in the possession of the tenant. Lord Ashbourne and Lord Justice Barry also invented a word there; they said he was in occupation of an entire holding created by "shrinkage." That was Nagle *v.* Galbraith. Ireland *v.* Landy was the name of the previous case. Then there were cases in which the question was whether holdings had been consolidated or not, or were separable; Domvile *v.* Dunphy, and Rourke *v.* De Robeck; questions of that sort arise frequently.

3472. Then there were very large questions as to whether "leaseholder" or "tenant from year to year" was a material question?—That has become immaterial now. A leaseholder, under the Act of 1881, could not apply to fix a fair rent until his lease had expired; under the Act of 1887 he can apply at any time; there have been many

Chairman—continued.

questions as to whether the transaction between landlord and tenant had amounted to the creation of a new tenancy, or the taking or surrender of a lease. I do not think you need, perhaps, go into that now, because it has become substantially immaterial.

3473. Cases arose where the tenant did not proceed regularly, and tried to defeat the landlord's right of pre-emption, did it not?—This was upon the power of pre-emption by the landlord where a tenant sold.

3474. There was a case of Waller *v.* Farrelly?—The case of Waller *v.* Farrelly, and also the case of Moore *v.* Smith, were cases where the landlord had been deprived of his opportunity of purchasing by the tenant's selling behind his back, or not taking the regular proceedings. In cases of that sort we have always held that unless the regular course was taken the landlord was not obliged to recognise the purchaser as a tenant at all. The real tenant did not lose his right; but he could not deprive the landlord of his opportunity of coming in; and there was another case, which would be interesting to people in Ulster, the case of Conyngham *v.* Boyle. The question raised there was whether a custom, when a farm fell vacant, to give it to an adjoining tenant prevented the tenant from selling to a person who was not adjoining. The tenant fought it on two points. He said, first: The holdings did not adjoin, because there was a stream between the two; but there was a bridge over the stream. I am only telling you the sort of question that is raised. There was a field between the holding in question and the holding that was occupied by the man who bought it from the tenant. Lord Conyngham was not interested in the matter one way or the other, because the adjoining was ready to buy at the same price, but we held that the adjoining man had proved a custom good upon the estate that when a farm fell vacant anyone who adjoined should have the preference at the same price, and we held that the landlord was not bound to accept the man who was separated by a field, when the man who was adjoining had the money and wanted the land.

3475. Does it not occur to you that a mediæval casuist would have found himself very much at home in some of these points?—The facts raise the casuistry, not the law. I think the dealings are complicated, but after all they are intelligible. The Ulster custom itself is a thing that is almost mediæval now, but it is none the worse for that.

Mr. *M'Cartan.*

3476. Do you think there has been much "shrinkage"?—I do not know that there has on good estates; I may mention that on a good estate, that is an estate where the rent was not raised, and where the custom was strictly followed, there is no doubt that the legalising of it has had one most injurious effect upon tenants, with regard to litigation amongst themselves. I have been terribly impressed with that upon circuit, where they go on fighting about bogs and ways, and, above all, about the title to their own holding. One man rushes off, takes out administration, and evicts his mother and sisters, and all the

Mr. *M'Cartan*—continued.

the rest. In the old days, what a landlord did was this, and I am very glad to say the custom prevails still on good estates: if there is a dispute, the agent goes down and he settles it; if the parties were not satisfied with his settlement, and were going into law, he formerly could serve them with a notice to quit, recast the holding, get rid of the dispute, and let them back again; but the legalising of the custom has of course put an end to that. I am not for one instant suggesting that the advantages are not enormously preponderating in favour of the tenant; but legalising the custom has its disadvantages too.

Chairman.

3477. On the point of present and future tenant you have explained that very clearly to us; in fact, it is an arrangement made by the Statute; but have any cases arisen where the line was very close?—It was run so close as this—why Parliament did it I am not to speculate — but a man who made his contract of tenancy on the 30th December 1882 was in a different position from a man who made his contract of tenancy on the 1st or 2nd January 1883. The man who bargained in 1883 was supposed to be bound by his bargain as a future tenant; the man who bargained in 1882 was not bound by his bargain, but was a present tenant; and it ran very close in Briscoe *v.* Howell, where the lease was made on the 8th December 1882, possession was given under it on the 18th December, but the lease ran for a term of years from the 1st January 1883, and the rent did not begin until the 1st January 1883. The Land Commission held that it was a future tenancy beginning on the 1st January. We held: "No; the tenant was occupying before the 1st January under a contract of tenancy made before that day, and he was entitled to his fair rent." You may think these questions metaphysical; it is the facts that raise them, and they have to be decided.

3478. There is only one other topic, which you will deal with very shortly. We have heard about Conroy *v.* Drogheda a good deal, and a very important point was raised as to whether contracting out was or was not affected by that decision?—I must at once say that the question of contracting out had nothing whatever to say to Conroy *v.* Drogheda, but we had a case of contracting out, one which was mentioned also in the evidence, Bradstreet *v.* Ferguson, on the 8th February 1888, where a tenant who had a lease of 1873, agreed with his landlord in 1884, and endorsed it on the back of the lease, that, notwithstanding any future legislation to the contrary, he would continue to pay the rent that was fixed by the endorsement: the rent by the endorsement was reduced from 200*l.* to 150*l.* in consideration of the landlord having taken 300*l.* in full discharge of arrears amounting to 400*l.* A rule of Court in ejectment for non-payment of rent had been actually made by a Court of Common Law, and the endorsement was put upon the back of the lease under it, and under that order we held that the tenant had contracted himself out of the Act of 1887 by the agreement of 1884, and that he was not entitled to fix a lower rent; but Conroy *v.*

Chairman—continued.

Drogheda had nothing to do with that question at all.

3479. Tell us what Conroy *v.* Drogheda went to?—If you will allow me to mention it, Conroy *v.* Drogheda came here before it was ever published at all.

Mr. *T. W. Russell.*

3480. That was explained by the witness who was questioned by a Member of the Committee; he expressly stated to the Committee that it was not reported, and therefore his observations upon it should be taken with that condition?—The first sentence of the Lord Chancellor's Judgment in Conroy *v.* Drogheda is, that "the case derives its importance mainly from the reasons on which Mr. Justice Bewley based his Judgment." Conroy *v.* Drogheda was this: Mrs. Conroy was the widow of a tenant who had had two holdings; one of them she got on his death, a place called Teneille.

Chairman.

3481. Which county is this in?—I could not tell you; I think it is in the Midlands somewhere.

3482. Never mind?—It was in the Queen's County; the other holding, Mullaghanard, was taken by the deceased's brother; I presume he had died without children, and that they had divided the two farms in that way. The wife would be entitled, under the circumstances, to half, and the brother to half; but probably they did not want to have anything to do with administration; the brother was evicted for non-payment of rent, the widow wanted to take part of the evicted farm, and the landlord was willing to give it to her; they entered into an agreement by which the rent of Teneille and the other were fixed as a joint-rent, and they put into the agreement that she was to have the two denominations as one holding, at a bulk rent.

Mr. *T. W. Russell.*

3483. The whole of the second holding?—No, the 10 acres that she got of the second. I said she was to get part; but she was to get the old holding in Teneille, and 10 acres of the Mullaghanard, holding at one rent and as one holding. That occurred in 1885; she remained on for some time, and then served an originating notice to fix a fair rent on the whole of both; the landlord said, "No, you are a future tenant, because you only hold this land since 1885"; and then the Land Commission allowed her to amend her notice by excluding the 10 acres altogether; she was a hopeless future tenant as regards that, she had never been in it at all until 1885, since her husband's time. They allowed her to amend the notice and to treat herself as present tenant of her old holding in Teneille; the rent was fixed upon that, and the order of the Land Commission said nothing about the 10 acres; it left it really to be squabbled about, and the landlord appealed. We held that in order to surrender property, and above all to surrender a present tenancy, at common law, a man must understand what he is doing, and must intend it, or it shall not be taken from him;

Mr. *T. W. Russell*—continued.

that is the good old equity doctrine applying to release and surrender, and in fact, to parting with possession of any property. The agreement had been drawn up in the landlord's office; it contained expressions about "old holding" and paying taxes "as heretofore." We were satisfied that the old lady never intended to alter her status as regards Teneille, and we were also satisfied that she thought she had the rights of a present tenant in both Teneille and Mullaghanard, but we could not possibly give them to her in Mullaghanard, and therefore we gave her the next best thing we could; we held that she had never surrendered Teneille, and therefore might fix a fair rent upon it. That was the judgment, and the whole judgment, of the Court of Appeal; but the case became complicated, and it perhaps misled people, by this; Mr. Justice Bewley had taken up the 20th section of the Act of 1881, that says, "that whenever the landlord resumes possession, a tenancy to which the Act applies shall be deemed to have determined," and he turned that into a negative; that no present tenancy shall be determined unless and until possession is given up. There have been three previous cases tending in that direction; Jackson *v.* Hagan was one of them, but that case came to the Court of Appeal.

Chairman.

3484. There is no conflict between Jackson *v.* Hagan on the one side, and Conroy *v.* Drogheda on the other, is there?—I do not think there is any. Jackson *v.* Hagan came to the Court of Appeal on the 8th December 1891, on on a case stated. Mr. Justice Bewley put the question, whether a consolidation of holdings and an alteration of rent, after 1882, necessarily made it a future tenancy. Our answer was this; that the facts were insufficiently stated, and in some respects contradictory; that it was a question of fact whether there was a new tenancy or not; and that the acquisition of an additional piece of land and the fixing of a bulk rent for the entire did not *necessarily* destroy the previous present tenancy; and with that declaration we sent it back; but whether he ultimately held that, as a matter of fact, there was the present tenancy or not, in the particular case, I cannot tell. We laid down: "It is a question of fact, and the alteration does not necessarily do it."

Mr. *Sexton.*

3485. Did any question of resumption arise there?—There had been a holding on a present tenancy, or rather there had been two; Hagan got them both after the Act, and he got them both at a bulk rent; in that respect it was very like Mrs. Conroy's case, it was sent up to us to know whether he could be deemed a present tenant. We said "The consolidation is not inconsistent with his being so, necessarily."

Chairman.

3486. The Chief Baron, and I think other members of the Court, decided the case entirely upon the common law doctrine of intention?—Yes; Mrs. Conroy's case.

3487. If you admit the common law doctrine of intention, do not you admit the possibility of

Chairman—continued.

contracting out; do not you give me the power of intending to contract myself out of the statutory power?—There is nothing that I know of to prevent a present tenant from surrendering his holding. I have already referred you to Torrens *v.* Cooke for that. This turns, not on contracting out, but on the effect of the 20th Section of the Act of 1881. "A tenancy to which this Act applies shall be deemed to have determined whenever the landlord has resumed possession."

Mr. *Sexton.*

3488. You were coming to McDonnell *v.* Blake, I think?—I was taking them one by one; Montgomery *v.* O'Hara was the first; it came from the Queen's Bench Division. That was a case in which the landlord was trying to turn out the tenant, and it was held, that because he had not got possession when the tenant took his proceeding to fix a fair rent, the tenant had not lost his tenancy, and his tenancy had not determined.

3489. I think, in McDonnell *v.* Blake, the Chief Baron himself dealt with the positive enactment of the section as a consequential negative?—There is no doubt he did, and he occupies a great part of his judgment, in Conroy *v.* Drogheda, in more or less apologising to the Land Commission for having influenced them by using general expressions when he ought to have limited his construction of the section, as he says he thought he had limited it, to cases of a particular class. McDonnell *v.* Blake was before us on the 9th June 1890, and the Court that heard it were the Chief Baron, Lord Justice Barry, and myself. There was a difference of opinion in the Land Commission; the tenant had served notice of surrender, possession was not taken up, and he afterwards served an originating notice; we held that he was at liberty to withdraw his notice of surrender, and that his tenancy did not determine until possession was resumed; and in that case the Chief Baron undoubtedly did use expressions, which he afterwards qualified himself, which would rather lead to the conclusion that this was a negative section; I mean, that it implied a prohibition. I was unable to take that view; I never have been able to take it. There are many cases I can put, and find in the Act, where a negative construction would lead to very curious consequences; but I may sum them all up by one passage from the Chief Baron's judgment in Conroy *v.* Drogheda. At page 63 of the "Irish Law Times," published this month, he says, after discussing the whole matter, and dealing with this question of its being a universal rule: "These considerations (and many others will occur to any real property lawyer) satisfying me that were the construction contended for to prevail, the whole system of real property law, the whole doctrine of title to estates, would be involved in inextricable confusion." I may put one case to you which I put in my judgment: A present tenant agrees with the landlord after the Act for a reduction of rent, for getting additional land, and for a clear and plain new tenancy; but the landlord does not turn him out; he does not go through the form—it is only a form—of putting him out and putting him in again; if this doctrine was to prevail, and any lapse of time to occur,

Mr. *Sexton*—continued.

occur, the thing would be void, the landlord could sue the tenant for the whole of the old rent, and the bargain would not be binding upon either party. That was admitted in the argument. It is a question whether any dealing with a present tenancy, without resuming possession, is void altogether, or whether it can be good; that really is Conroy *v.* Drogheda, and nothing else.

3490. Do you happen to have the words of the Chief Baron in McDonnell *v.* Blake available?—McDonnell *v.* Blake, I think, is reported.

Chairman.

3491. When was McDonnell *v.* Blake, was it July last?—No, on the 9th of June 1890 in Montgomery *v.* O'Hara. You will see that Lord Ashbourne and the Chief Baron, in McDonnell *v.* Blake, both used the expression that a tenancy to which the Act applies cannot be determined without resumption of possession. It was perfectly accurate in the cases of which they were speaking, but if you apply it as a universal rule to all tenancies to which the Act applies, you will indisputably get into this, that a tenant may go through any formal rearrangement with his landlord, and it will be void, and the tenant will suffer more than the landlord very often, unless there is a formal resumption of possession.

Mr. *Sexton.*

3492. You say that in the case of which they were speaking it would properly include the negative; but what are the other cases?—The cases to which the thing would apparently apply are those that are mentioned in the Act of 1881 itself. There are strange words in the section, which speaks of "Whenever the landlord has resumed possession of the holding either on the occasion of a purchase by him of the tenancy, or of default of the tenant in selling, or by operation of law, or reverter, or otherwise." The words "or otherwise" ought to cover every case; but that would have the effect which the Chief Baron has pointed out. All the other specifically mentioned cases are cases arising under the Act itself. "Reverter" is a case where the tenant dies without having any body to represent him, and the landlord takes the holding up. The default of the tenant in selling is where the landlord has given him the opportunity under the Act to sell, and he does not avail himself of it; then he may be put out, and the purchase by him of the tenancy means a purchase under the Act. There are plenty of cases to which you cannot apply this at all, as it seems to me, as a negative clause, and I think it is in all cases affirmative; but I have given you the real point of Conroy *v.* Drogheda.

3493. I do not think you have said to-day how far the judgment in Adams *v.* Dunseath bears upon farms admitted to be under the Ulster custom?—I do not think it has any bearing on the Ulster custom; the Lord Chancellor spoke of that matter, and everyone of the other Judges pointed out that it was assumed that we had not to deal with an Ulster custom case at all. Remember, the Ulster custom, upon this matter of compensation for improvements, varied on different estates. I gave you a very instructive instance on the Conyngham estate, where the only money the tenant was allowed was the valuation put on his improvements by two valuers and an umpire.

Mr. *T. W. Russell.*

3494. Under these estate rules?—In that particular case; there are instances where the tenant would have free sale, but others, where he sold under the custom, in which the price was limited. I knew many instances when I was at the Bar; some were limited to 10*l.* per acre, others were as high as 40*l.* per acre, and I knew of one very exceptional instance of free sale in which 100*l.* per acre was awarded where the landlord took it up.

Mr. *Sexton.*

3495. The restrictions in the Act of 1870 would not apply to the Ulster custom, would they?—I think not, unless the Ulster tenant comes in as an ordinary tenant. Any Ulster tenant can take his choice, and either claim under the custom or as an ordinary tenant, and I should take it, from the latitude from which he comes, that he would elect to go under whichever would give him most money.

3496. Your answer in the third question of Adams *v.* Dunseath would not relate to any Ulster custom?—No. In Adams *v.* Dunseath every Judge except the Lord Chancellor pointed out that it was assumed that there was no Ulster custom in the case, though it came from Ballymena. The Lord Chancellor thought the Act intended to put the Ulster tenants and others on the same basis,—and the rest of us could not follow that.

Mr. *Dillon.*

3497. Just one question about the house. You said, as I understand, that in your opinion the tenant had no right to exemption for the house in the particular case?—Yes, in that case.

3498. You did not convey that it was your impression when you sent up the case to the Land Commission that they did take, to some extent, the house into consideration; did they do so?—They did; the Order says that they put 2*l.* on the house.

3499. Therefore they did not accept your view entirely?—Yes, they did; but I do not know that they did so to the full value of the house; but we all of us disclaimed having anything whatever to do with what amount they were to put on; but they did take my judgment, and they did put 2*l.* rent upon the house. My holding was that the landlord was entitled to something.

3500. The full value?—No, I did not know anything about the full value; no question of value or amount came before us at all. Keep that well and clearly before you. The Act of Parliament says that no such question shall be referred; "shall be permitted" is, I think, the expression.

Mr. *Sexton.*

3501. You held that he was entitled to have something?—I held that the house was part of that interest in the holding which belonged to the landlord, because he had paid for it and Adams had not.

Chairman.

3502. And which Dunseath had bought when he paid his 6,000*l.*?—Yes.

Mr. *Dillon.*

3503. That is a point I want to be clear about. You held that the house was only the property of the landlord?—I did, because I thought he had bought and paid for it.

3504. They put 2*l.* upon it?—They put 2*l.* upon it. I have handed the Order in (I suppose it should go on your Notes), and it will show you exactly what they did.

Mr. *T. W. Russell.*

3505. You have not referred to Spencer *v.* Tedcastle. As I understand, it went this length: that demesne land, let for a period of 999 years, was not undemesned by that?—No; Spencer *v.* Tedcastle went on the same principle, which was afterwards carried very much farther by the case of Pratt *v.* Gormanston; the land was let on a fee-farm grant, and the grantee used it as demesne; and what Spencer *v.* Tedcastle decided was that a fee-farm grantee might make land demesne land, or hold it as such.

Friday, 8*th June* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Macartney.
Mr. Carson.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Fuller.	Mr. Sexton.
Mr. W. Kenny.	Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Colonel E. R. BAYLY, called in; and Examined.

Chairman.

3506. You are, I believe, a lay Assistant Commissioner?—Yes.

3507. How long have you held that office?—Since October 1881.

3508. Practically, therefore, you have taken part in the administration of the Land Act of 1881 since its inception?—I have been employed fixing rents in the Fair Rent Department since my appointment.

3509. Will you tell us what your previous occupation and training were to fit you for that post?—I was connected with land from the year 1866.

3510. What sort of connection with land had you?—I was farming in America in 1866, from 1866 to 1870, or the end of 1869.

3511. What was the nature of the farming?—I was farming a tillage farm of 450 acres.

3512. And in what part?—In the State of Wisconsin.

3513. Then, in Ireland, what has your experience been?—In 1870 I went to Lord Lansdowne's estate office in Kenmare.

3514. Mr. Trench's office?—Mr. Trench's office. I studied agency business, and in the year 1871 I commenced agency business. I had agencies from 1871 to 1873; I had agencies in Galway, Roscommon, Wexford, Wicklow, and Westmeath. In 1873 I became Lord Carysfort's agent in County Wicklow, and resigned all my other agencies.

3515. And, according to the Parliamentary Return, you were there for nine years?—From 1873 to 1881.

3516. Eight years, then?—Yes.

Mr. *T. W. Russell.*

3517. You never farmed in Ireland then, apparently?—Yes, I was farming from 1873 to 1876 in County Wicklow.

Chairman.

3518. That was at the same time you were managing Lord Carysfort's home farm?—That is in addition to another farm I had on my own account.

Mr. *T. W. Russell.*

3519. You were agent in Galway, Wicklow, and Westmeath from 1871 to 1873?—And Roscommon.

3520. When did you commence farming?—In Ireland I commenced farming in 1873. I had farmed, to a small extent, in Roscommon previous to that.

Chairman.

3521. Now in what parts of Ireland have you acted as a Sub-commissioner since October 1881 when you were appointed?—I have been through the whole of Ireland, with the exception, I think, of three counties.

3522. Have you been more in one province than in another?—Yes, I have been more outside Ulster.

Colonel *Waring.*

3523. Which three counties have you not been through?—Louth, Londonderry, and Westmeath. I think that is all I have not worked in.

Chairman.

3524. You have been more in Munster, Leinster and Connaught than in Ulster?—Yes.

3525. And of the other provinces, which have you been most in, Connaught, Leinster, or Munster?—I think in Munster.

3526. Largely in excess in Munster. Were you mostly in Munster? Perhaps you do not know?—I think not. In Munster, Leinster, and Connaught, I have been pretty much the same period.

3527. And you were under the chairmanship of various Legal Sub-commissioners, were not you?—I have acted under several Legal Sub-commissioners.

3528. The Committee has had from your namesake, Mr. Bailey, the Legal Sub-commissioner, a general account of the proceedings of a Sub-commissioner in fixing a fair rent after the serving of an originating notice; but you will tell us over again in a sentence or two what you do. May I ask: Have you served under Mr. Bailey?—Only in one exceptional case, where

Chairman—continued.

Mr. Doyle could not hear the case and Mr. Bailey heard it.

3529. Under what legal chairman have you generally served?—Under the present Judge Kane, Mr. Doyle, Mr. Crean, and Mr. McDevitt. I think that is all.

3530. You will tell us again then (Mr. Bailey having already giving us his account), how, on the Sub-commissions on which you have served, you do your work?—We sit with our legal colleague in Court, and we take full notes of the evidence. The cases having all been disposed of in court, the lay Commissioners make their own arrangements for the inspection of the farms; notice is sent to the representative of the landlord, and also to the tenant, notifying them of the day on which the Assistant-Commissioners will inspect the farm.

3531. On such and such a day?—On such and such a day. We proceed to the farm with our note-book in which we have taken our Court notes.

3532. Do you take any documents with you beside?—We take the Ordnance sheet.

3533. And what else?—That is all, and our note-books.

3534. Do not you take the tenant's schedule of improvements?—We have that in our books; it is a matter of evidence. The tenant has to give evidence in Court of his improvements which he has alleged on the back of his originating notice. All that he proves we have down in our field-book.

3535. When you and your brother Sub-commissioner find yourselves on the holding, how do you set to work?—We meet the representative of the landlord there and the tenant; we go round the farm and make a valuation of it; classifying the land, marking the different classes of land carefully on the Ordnance sheet; and marking the boundaries of the farm on the Ordnance sheet.

3536. I take it that you check the boundaries that have already been marked?—No; a map is very seldom produced by the parties; sometimes it is produced, sometimes it is not. We have the Ordnance sheet, and we mark the boundaries.

3537. Wait a moment; I do not understand. You go on to the holding?—Yes.

3538. How do you find out what the holding consists of?—The representative of the landlord is there and the tenant, and they, as a rule, know—the tenant certainly knows—the boundary of his farm, which he points out.

3539. Then how do you check that? He says, "My boundaries are so-and-so," I suppose?—Yes.

3540. How do you check that?—The representative of the landlord very often knows the boundary; very often he does not. As a rule we are entirely in the hands of the tenant as regards the boundary of the farm; but, as a matter of fact, the tenant always points out the correct boundaries; there is not one case in a thousand where there has been anything incorrectly pointed out.

Mr. *Sexton.*

3540.* Then you mark the boundaries on the holding?—Yes.

3541. The adjoining tenant is not there, is he?—He may or may not be; he is not likely to be there. If there was a bit of land in dispute between two tenants he probably would be there.

3542. A suggestion has been made, and that suggestion appears to be this: that unless the adjoining tenants were there, the tenant would give an incorrect boundary. I want to ask you whether in any case the adjoining tenant was there or not?—I have known it to happen, but it has been in those cases where there was a dispute between two tenants as regards a little corner of the farm; in that case probably the adjoining tenant would be there to see that the boundary was, or was not, marked wrongly.

3543. But in the absence of such standing dispute the tenant may be relied upon to give the correct boundary?—Quite so.

Chairman.

3544. Everybody has heard of "rundale" in Ireland; how do you do in cases of that kind?—We mark the farm in "rundale" on the maps, and deal with it in rundale.

3545. In strips?—In strips.

3546. You take no oral evidence on the farm; or do you?—As a rule, we do not; I may say, we do not. It is quite the exception where we could entertain evidence on the farm. I have met a case where a tenant had forgotten to enter on his notice a certain improvement, and the representative of the landlord admitting the improvement it was allowed to that improvement.

3547. When we come to improvements, and even before that, how do you test the claim for improvements, if you do not take any evidence; is it simply from examination and inspection. Do you take from the tenant any explanation or elaboration of his claim. He makes a plain claim on the back of his originating notice. We understood that inquiries of this kind are conducted in Court?—Yes.

3548. My question points to this: Do you supplement inquiries made of the applicant, and any witness he may bring, by questions to him or to anybody else, when you are actually on the ground?—My answer is, no, we do not, except under some very exceptional circumstance.

3549. Then I suppose you take very full notes of the observations on the improvements?—On the land?

3550. When you are on the land, I am on that entirely, we have taken you on to the land, and we will keep you there. You take a full note as regards improvements, do you not?—Yes.

3551. How much time do you spend on a holding on an average; it varies, of course, but on an average, how much would you say?—It really depends on the class of farm. On a small tillage farm, one of these rundale farms mentioned just now, that may take far longer, even if it is only 15 or 20 acres, than a grass farm of a hundred acres, it depends upon circumstances.

3552. You

Chairman—continued.

3552. You cannot give us any idea of how many holdings on an average in your circuits you dispatch in a day?—I think, in the present state of the business, that three cases a day is fair work, although last week I did six cases in one day; but when asked generally how quickly the work could be got through, I think three cases in a day is very fair work, owing to the cases being so scattered as they are now.

3553. Practically that is about what you think, that you you-——three cases in a day?—I think so.

3554. You work every day of the week, I take it, except Sundays?—We work every day of the week. Having inspected, say for two or three days, we then take an office day.

3555. We have been told by Mr. Bailey, and I suppose the practice is universal, that you meet the legal Chairman, you have your report ready, and the case goes on, and the rent is fixed?—We complete all our work during the office day, and try to get everything ready for the Legal Assistant Commissioner who meet us.

3556. Now we will go on to the land again. Your first step there is what? What is the first thing you set to work to value?—The land.

3557. That is to say, you consider what is the class of land?—What class of land it is; we dig the soil; we have the map, and we mark on the map the classes of the land, so as to ascertain afterwards the different quantities of the different classes of land.

3558. In valuing the land, besides the class of soil, or classes of soil, of which the holding may be composed, do you take into account at all prices?—In a general way. I would not know how to take them into account in any other way.

3559. You say you take prices into account in a general way; but then you are aware, no doubt, that the Land Commission issue a return of prices?—I am.

3560. Do you take these returns with you?—Are these returns sent to you? Do you use these returns?—I do not use them.

3561. Are they sent to you?—They are.

3562. They are sent to you?—Yes. I do not use them because I think they will give me practically no assistance in arriving at what a fair rent is.

3563. Do you mean to say by that that no returns of prices would be of any assestance to you?—I go so far as to say that.

3564. You would go so far?—I would go so far as to say that I do not think they would be of any use to me because prices without the return of the produce is very misleading.

3565. You mean to say that with an abundant supply of produce the prices would not assist you?—Prices may be very low and an abundant supply; on the other hand, prices may be very high with very short crops.

3566. Then, as a matter of fact, in your examination and inspection of the holding, you do not take prices into account at all, do you?—Only in a general way.

3567. I want to know what those words mean, if you can kindly tell us. I mean this: you either take prices into account or you do not?—Then, sir, my answer is; I do not take them into account.

Chairman—continued.

3568. Neither in a general nor in a particular way?—I wished to say that I do, in a general way. One cannot shut one's eyes to prices and produce.

3569. Supposing now that prices were at a certain level when you first began your operations in the autumn of 1881, and that afterwards, we will say in 1886, they fell, do you mean to say that that fall would not affect your judgment in fixing a fair rent?—Yes, very much, and it has affected me; the fall in prices, and the general depression in agriculture, has affected me very much.

3570. If you went on to a farm to-day, then, or next week, would you think of prices at all or not. From your last answer it would appear that you would think of prices, because you say that the fall that took place did affect you; therefore I am at a little loss to understand what position you take?—In a general way the prices must be taken into account; my knowledge of prices and produce.

3571. What you mean is this, then, that if there was, all over Ireland, a marked and general fall or rise, you would take that into account?—Certainly.

3572. That is what you mean by "in a general way"?—It is a factor which cannot be left out.

3573. Do you take into account such a circumstance as proximity to a market, or to a railway, as part of the value of the land?—Yes, particularly proximity to a good market.

3574. And to a railway?—And, to a certain extent, a railway.

3575. Only to a certain extent?—Only to a certain extent compared to the situation as regards a good market. I consider the good market is far more important. The ordinary tenant very seldom makes use of the railway, whereas he makes use of the market once a week.

3576. Would you take into account as affecting the value of the land (of course you would) the water supply?—Certainly.

3577. Turf?—Yes.

3578. In some parts of Ireland, if I am rightly informed, turf is not only fuel for the tenant, but it is an article of commerce?—There are districts where tenants make a trade of taking a turf bank from the landlord, and cutting it for sale.

3579. That, of course, would affect the value; the facility for carrying on this "trade"?—Well, it gives the people some little employment.

3580. Of course this trade in turf, whatever it amounts to, is not part of the agricultural holding as such?—No.

3581. My point is simply this: whether the proximity of a turf bank, for commercial purposes, would be taken into account in valuing the land?—Certainly, if it existed on the holding, and the tenant given the right of selling turf.

3582. That is quite true, but suppose it existed outside the holding?—I would not take that into account. The turf disappears; the tenant is getting every day further and further away from his holding; it gives him some little means to live; but he pays for it. He buys the turf bank.

Chairman—continued.

3583. That must be, and I know it is a very limited kind of trade; but now as to convenience for carrying on the industry of fishing, is that considered by you to affect the value of land?—It is considered by me.

3584. It would be considered?—I consider that, certainly. There are certain districts in which the convenience of fishing enables the people to live. If they had not that little industry they would not be able to live in that district at all, and to a certain extent I would take that into account.

3585. Your first step then is to value the land with all these considerations which you have now been enumerating. You then, I suppose, consider improvements?—In valuing the land we consider improvements as we are going over the land, valuing the land, walking from one field to another; the improvements are then pointed out by the tenant, and that is the time we take full notes about the alleged improvements.

3586. I mean the operation is a different one. You value the land, that is one thing; and though you may do the other thing at the same time, it is another thing, namely, valuing the improvements made upon the land?—Certainly.

3587. Of course, in the court, where you have heard the evidence of the tenant, and any witnesses he can get as to improvements, I suppose there are people, (many of them being ignorant and inexperienced, and so forth) who are under a certain disability in making out the best case they can for themselves; are they?—They are.

3588. There are people who, if by chance you put questions to them on the land, the tenants and any witnesses they may get, are not very skilled in the statement of a case?—Well, they understand stating their case very well through their solicitor in court.

3589. Do they produce any accounts?—Accounts as regards the cost of improvements they are well up in.

3590. Do they produce them?—Very often.

3591. They do very often produce accounts, you say?—They do very often.

3592. Receipts, bills, and so forth?—They will produce a statement showing that they made so many perches of drains, and that those drains cost them so much; they will state, we will say, that they reclaimed so many acres of land at a cost of so much an acre.

3593. But I rather meant what kind of proof do they bring before you of these things? It is not very easy for these people, I should think, to prove these things?—It is often very difficult for them where the improvements have been made a very long time ago. It is simple enough where they have made the improvements themselves; but where the improvements have been made by their fathers, who may be dead, it is sometimes in such cases exceedingly difficult for them to prove.

3594. The classes of improvements, I suppose, are well known, drainage, fences and buildings; those are the three main classes of improvement, are they not?—And reclamation.

3595. Reclamation, of course; that is the first of all?—Reclamation, draining, fencing, and building.

Mr. *Carson.*

3596. That is included, is it not?—Generally it is included.

Chairman.

3597. In all these classes of improvement there is a great difference, I take it, in the quality of the improvement; the drain is sometimes well made, sometimes ill-made; there are great differences and difficulties of degree?—We find that very often that some drains are well made, others very badly; and very often that land which has been drained by the tenant at great expense was not worth the labour.

3598. Do you find many cases of that kind in which the improvements are not worth the labour and money expended upon them?—It is quite a common thing to find that the tenant has spent far more money than he could expect to get a fair return for.

3599. In those cases do you give the per centage on the outlay?—No, I do not.

3600. Why?—I do not deduct from the rent a percentage; I do not deduct from my valuation of the land a percentage of the outlay in such a case.

3601. Because, I suppose, your argument is, that if you deduct the regular percentage on the outlay, you might consume the whole rent?—In that case I would not deduct according to the outlay.

3602. If you found that the improvements were not worth the outlay expended upon them you would not make a percentage deduction upon that outlay?—That is what I mean.

3603. Supposing that the improvements were not at all worth the money spent on them do you allow any deduction at all?—If the improvements are no use, I would not allow anything.

3604. That is to say, there are cases where you allow nothing on money expended by a tenant on so-called improvements?—Yes.

3605. There are such cases?—There are such cases.

3606. Will you tell us now on what principle you proceed in reclamation cases?—Well, Sir, I try to arrive at what the land was worth in its unreclaimed state, and I find no difficulty in arriving at that, generally, from the surrounding land; and the rent I put on that land is its value in its wild state plus something for improvability.

3607. Improvability?—Improvability.

3608. Improvability is the quality inherent in the soil?—Yes; I try to allow what is fair for that and leave the tenant to expend what he likes on it.

3609. Then the three elements of value are, first of all, the wild land?—Yes.

3610. Second, something in the land which makes it capable of improvement?—Facilities, too, for improving the particular holding.

3611. And third, the improvement that has actually been made?—Yes, and I leave that to the tenant.

3612. Those are the three elements. Then as to drainage, there is a different principle there, I suppose?

Chairman —continued.

suppose?—In thorough drainage I would act upon the same principle.

3613. You say "thorough drainage." What is the other kind? You use the word "thorough"; evidently it is a term of art; what is the opposite term, or that which is different from "thorough" drainage? — What I call scattered drains; a few drains here and there through the farm where there was a wet corner.

3614. Upon what principle do you go in estimating "thorough" drainage?—In thorough drainage exactly the same as reclamation; I deal with them in the same way; I try to arrive at what the land was worth previous to having been "thorough" drained.

3615. Then about scattered drainage, what do you say?—In dealing with scattered drainage I make an estimate of the cost and I deduct a percentage on what I consider the outlay, that scattered drainage being scattered all over the farm.

3616. You have no other standard to apply to what you call scattered drainage but the outlay upon it?—That is the only way I can deal with it.

3617. You do not regard the question of whether it is particularly suitable, whether it was required, or any other consideration?—Well, in scattered drainage it was required; the work would not have been done unless it was required; and it leaves these wet corners to look like the rest of the field.

3618. Now, in the third kind of your improvement, buildings and fences, how do you manage with them?—If the buildings belong to the tenant no rent is put on them; if the buildings belong to the landlord we add on to our valuation of the land what we consider fair for the buildings.

3619. Is there any difference between Ulster and other places; you have been there, have you not?—Not so much as in other parts of Ireland.

3620. Is there any difference in the matter of fences and buildings between Ulster and other parts of Ireland?—My experience of Ulster was that the landlords there did not claim on buildings; they were admitted to be a portion of the tenant's tenant-right. Outside Ulster it is quite common to find the landlords claiming buildings.

3621. You mean then that in Ulster the presumption in respect of buildings is in favour of the tenant, but that in other parts of Ireland there is no such presumption?—In yearly tenancies outside Ulster, of course, the presumption is that the buildings are the property of the tenant; but in those cases it is quite common to find the landlords making a claim for the buildings.

3622. Which he supports by books and bills and so forth?—Which he is sometimes able to support, and he gets rent for the buildings, and very often he gives up the claim when he hears the tenant's case.

3623. He does?—Very often; he has to.

3624. But he has some advantage, in the possession of books and accounts, over the tenant, who, as you say, has only his father's work to refer to, which he can rarely prove?—He has, I think, a very great advantage over the tenant.

Chairman—continued.

If the buildings are the landlord's I think the landlord ought to be able to show that they are his, and that he should not get rent in respect of the buildings unless he can show that he acquired that building or made it.

3625. In other words, you think the presumption ought to be, in respect of buildings, on the side of the tenant?—On the side of the tenant.

3626. Outside Ulster as well as inside Ulster?—Yes.

3627. So much for the cases of claims for improvement. You have many cases (I do not know whether it is a majority or not) where there is no claim for improvements on the originating notice?—That case very often occurs. Of course, in valuations under 10*l.*, it is not necessary to state it on the notice; but sometimes, in cases where the valuation is over 10*l.*, the tenant, through some neglect, fails to claim his improvements, and in some of those cases the landlord has allowed them to be considered. In other cases the case has been adjourned to enable the tenant to serve a fresh notice so as to claim his improvements.

3628. But in these cases, where the tenant did not have the opportunity given him, or did not use it, to claim for improvements, different to what we were speaking of before, where there is no claim made, and you have no schedule on the back of the originating notice, do you assume that the buildings and drains are the property of the tenant or of the landlord?—As regards the drains, we are not allowed to deal with them unless by consent of the landlord, who meets us on inspection, owing to the fact of the tenant having failed to claim those drains on his notice. Buildings are different. I think what I should do as regards buildings is this: If it were a yearly tenancy I would give them to the tenant.

3629. Have you found in your experience that the right of pre-emption given to landlords has acted unfairly to the tenants?—It certainly has.

3630. Why? How do you make that out?—The tenant naturally expects the competition price for anything he has to sell, and he does not see why, when selling his interest in his farm, he should not receive the competition price; and we are debarred from giving him that price.

3631. You do not take into account any such element, for example, as what you may call the "fancy" of a tenant?—We are not allowed to take that into account.

3632. Now just one other question before I close; have you any opinion as to the expense of fixing fair rent?—I think the present system is very expensive both to landlord and tenant.

3633. Have you any suggestion to make to the Committee as to how this evil could be remedied?—I saw a suggestion made by Mr. Bailey as regards how certain small holdings might be dealt with; but I would go a great deal further than that and suggest that every tenant should be given the same facility, and have means offered to him, and the landlord, of agreeing to a rent, free of cost. I think that might be done by the Commissioners sending one of their staff down to inspect and report to them as soon as possible after service.

Chairman—continued.

3634. In the same way, you mean, as that in which the Court valuers do it now?—Yes; as soon as possible after the service of the originating notice. This commissioner, or Court valuer, would meet the representative of the landlord and the tenant on the farm; they would go into the case generally, and report result to the Land Commission.

3635. Do you think that there should be any appeal on value from the sub-commission?—If the parties were given the opportunity of settling by means of the Court valuer going down in the first instance, and, the parties not being satisfied with his suggestion, then of coming before the Sub-Commission Court, I do not think, on value, there should be an appeal.

3636. Then you have already told us (this is the last question I will put to you) that from your observation you think all improvements found on the farm should be presumed to be the tenants'?—I think they should be presumed to be the tenants', unless the landlord could show that he acquired them or made the improvements.

Colonel *Waring*.

3637. I have very few questions to put to you, but there are just one or two that occur to me as a practical farmer myself. Mr. Morley put a question to you with regard to the difficulty a tenant would have in giving evidence of his improvements; now, as a matter of fact, what evidence do you require from a tenant?—He has to prove his case. The tenant must prove his case in Court.

3638. The point I am on is this: you do not require documentary evidence from a tenant to prove his improvement, do you?—Not necessarily documentary evidence, but he has to prove his case in Court.

3639. But if the tenant is able to produce the oldest man in the neighbourhood to prove his father's or grandfather's improvements, that you would accept?—That very often saves them.

3640. As to the quality of drains, do not they differ very much?—Yes, it varies very much.

3641. Assuming drainage of the best possible quality, how many years do you allow for its efficiency?—May I ask you; are you talking of thorough drainage?

3642. I am talking, in the first place, of thorough drainage. Supposing the drainage to be of the best quality in execution, how long do you allow for its continuing effective?—I think it will continue effective as long as the outlets are properly maintained; it may last for a very long time; I have met drainage 30 or 40 years' old.

3643. Is it not your experience that in certain classes of soil the best-made drains will silt up?—I have met that, but I have also met sod-drains working well after 30 years.

3644. I have seen-sod-drains worked after 50 years; but that is quite the exception?—Yes.

3645. Then on the question of reclamation; you say that you allow the cost starting from the value of unreclaimed land, and that that value is determined in amount by the unreclaimed land of the neighbourhood. If you are in an old-established district where there is no reclaimed land, how do you go about it then?—I have to form the best opinion I can.

Colonel *Waring*—continued.

3646. In other words, what is the "bed rock" of your valuation in an old-cultivated district, such as many of the valleys are in Ireland, where there is no unreclaimed land for many miles?—I would hardly expect to find reclamation in such a country; "reclamation" is generally applied to reclaimed wild mountain land, or, very wet marshy land.

3647. Supposing a claim was made for reclamation in such a district; suppose, for instance, a man said he had stubbed out and reclaimed five acres of whinny ground, how do you go about that?—If I found that what is called reclamation was simply stubbing up whins, I would deal with that by allowing something on what I considered should be the cost of that work; but I would not call that reclamation. It is very often called reclamation when it is only removing a few furze bushes.

3648. Then you would not allow the same man to "relaim" the same field three times in the tenancy of a predecessor and himself?—No, but it shows me the nature of that land; that is to say that it is liable to go back. I take that into account.

3649. You take, I suppose, into account the quantity of whins and the neighbourhood to supply the seed as well?—It would show me the nature of land in the fact that the tenant has to make an annual outlay in keeping such land clear of furze.

3650. The best land may be deteriorated where whin seed gets into it?—Some land is much more liable to produce whins than other land.

3651. You cannot, in fact, give us any guidance as to what your original "bed-rock," or what is commonly phrased "prairie value," is, where it starts?—I generally arrive at that from surrounding land, sometimes it is difficult, at other times it is quite easy to see what it was.

3652. And you cannot fix, I suppose, the date when the prairie value existed?—You have the evidence as regards when the reclamation was made.

3653. Provided you can go back to a state of nature, but I am supposing land which has been too long in cultivation for any evidence to exist as to the time when it was in a state of nature?—I do not find reclamation on such land. Reclamation deals with wild land.

3654. That is quite a satisfactory answer to my point. You do not find reclamation on such land?—That is so.

3655. I want to ask you as to scattered drainage, we all know what that means; some of it is very valuable; some of it futile. You give a large amount for draining a wet bottom?—Certainly.

3656. But a patchwork drainage which was of the old fashion I suppose, you would not put much value upon?—I have to deal with the case and form the best estimate I possibly can on the land.

3657. I do not know whether you are aware from your practical experience in Ulster, that there

Colonel *Waring*—continued.

there was a practice in old times of running a drain round hills, what was called "between the hoof and the hair," which has been concluded in all modern construction to be utterly valueless. Do you allow for such a thing as that?—If it were valueless, certainly not.

3658. I want to know your opinion as to its value?—I have seen such drains very good and useful, in my opinion.

3659. I presume, as an agriculturist, you are aware that every agriculturist has adopted the principle that drains should run up and down the hill?—Yes, or across land.

Mr. *Macartney.*

3660. You have stated that there was no oral evidence taken when you were visiting the holdings, but may I take it that anything necessary to elucidate the evidence which has been taken in court would be permitted; I mean to say, as you would ask the tenant questions?—Certainly.

3661. And, so far as the landlord or his representative did not object, any points which could be explained on the holding you are quite ready to hear from the tenant?—Certainly.

3662. With regard to this question of improvements, may I take it that with regard to buildings and reclamation the parol evidence of the tenant sworn to in court is conclusive unless the landlord can distinctly show, and prove to the satisfaction of your Commission, that the buildings or reclamation are his, the buildings first, at all events?—Yes.

3663. Suppose the tenant comes into court and swears positively that either he or his father, to his own knowledge, erected the buildings, or, if not able to do that, produces an old inhabitant who was in the neighbourhood at the time, and gives ordinary parol evidence of the fact; that would be conclusive unless the landlord was able to disprove it?—Unless the lease handed it over to the landlord.

3664. Now, with regard to testing the evidence given in court on the holding. I want to ask you about drainage: supposing the tenant swears in court that he has carried out drainage on the farm; how do you test that?—By examination of the outlets, and by the appearance of the ground, the lie of the ground; that is the only way of testing it.

3665. It has been suggested that the tenant has some difficulty in proving to the court his outlay on such improvement; but may I take it that before your Commission his evidence has generally been supported by surveyors?—Yes, the tenant generally produces a surveyor.

3666. Who swears to the measurement?—Who swears to the measurement as pointed out by the tenant.

3667. And, I suppose, besides swearing to the measurement, he very often goes further than that, and gives his opinion?—He is very often asked his opinion.

3668. He is asked his opinion?—Yes.

3669. Do you think, from your experience in court on this question, that the tenant is at any very material disadvantage; he has generally got his solicitor, and, in most cases, a surveyor too, has he not?—He very often loses his improvements by not being able to prove them,

Mr. *Macartney*—continued.

although it is perfectly evident that there is not a sixpence of the landlord's money in those improvements. I have met hundreds of such cases.

Chairman.

3670. You have met hundreds of such cases, do you say?—Hundreds of cases.

Mr. *Macartney.*

3671. Where does the defect come in?—The work may have been done by his father or grandfather; they may be dead, and the tenant may have thought it not necessary to go and hunt the country up for ancient inhabitants to come and prove it.

3672. What particular class of improvements are you talking of?—Buildings.

3673. I am talking of drainage?—The 20 years' limit debars the tenant from his right to claim for drainage, and therefore that difficulty does not arise.

3674. Exclude reclamation and buildings, which come under a different heading. I am talking of unexhausted improvements which he may claim on his farm. Do you think he is at a disadvantage in presenting his case to the Sub-Commission in any other way, from your general experience?—No, I do not think he is. Exceptional cases, of course, arise.

3675. I may take it, I suppose, that from time to time in your practice (as I suppose happens in any other court) you came across cases where the tenant has claimed for improvements and sworn them in court which have not been substantiated on the holding afterwards?—I have been at work since 1881, and I can remember one case, one case only, of that kind, where the tenant made a large claim.

3676. An exaggerated claim?—A large claim; and when it went on the land I found it was an imaginary claim altogether. That is the only case I can remember. There is, of course, often exaggeration.

3677. I may take it that "thorough drainage" would include mains, sub-mains, and minors, and you would not apply the expression to any drainage which did not include that?—No, not "thorough drainage."

3678. In your experience, is it common to find thorough drainage?—Well, it is not uncommon. It is about as common as it is to find reclamation. It is a first step to reclamation very often; sometimes it is quite separate from reclamation.

3679. What is your proceeding when the drainage carried out on the farm is not ameliorative to the holding; not by reason of default in the drainage on the holding, but because the drains into which the mains flow near to the holding have not been kept clear, and get filled up, and throw back the water?—The tenant must suffer in that case. We have to go by what we find on the land, and although the tenant has made the drainage, if he allows that drainage to be of no use by long neglect of the drains, and the land is practically not improved at all, of course, he suffers.

3680. Of course, all drainage requires maintenance?—It requires maintenance.

 3681. Without

Mr. *Macartney*—continued.

3681. Without maintenance it becomes of no use to the holding; it ceases to have any ameliorative character?—That is so.

3682. That is not an uncommon state to find drainage in, is it?—No, it is not at all uncommon.

3683. What would you consider a fair estimate per acre of the cost of drainage?—It depends very much on the nature of the land.

3684. I will take the average land?—I should say roughly from 5*l.* to 8*l.* an acre, according to the class of land.

3685. Of course it must vary according to the character of the subsoil and so on?—Yes.

3686. Then with regard to drainage carried out on what you describe as wild reclaimed land, open drainage?—Not necessarily open drainage, it may be open.

3687. That would be cheaper, would it not?—It depends, it may or may not.

3688. A good deal of that is generally reclaimed by open drainage, is it not?—A great deal of it, yes.

3689. That you would put at something lower?—Yes.

3690. You have been asked by the Chairman with regard to the time you spend on a holding, which you have told us varies according to the circumstances of the holding. Of course it would be quite impossible to deal with all holdings at the same pace?—It is impossible.

3691. Some are much more difficult to inspect and value than others?—Yes, and even much more difficult to mark the boundaries.

3692. I suppose we may take it that three cases a day (which you have told us you consider very fair work) is quite as much as any Commission could get through, doing their work effectively?—For a rough estimate, I think so, but it varies of course very much; for instance, last week I did six cases in the day, and another day I did only one.

3693. Would there not be great objection on the part of the tenant, and the landlord probably, if the Lay Commissioners were to hurry through their work, or to scamp it?—There would be very great objection on both sides.

3694. You have told us that you first consider the land, with a view to classifying it?—With a view to valuing it.

3695. The land is classified, is it not, in the pink paper?—Yes.

3696. You place it in one or another of the categories?—That is our classification; we classify the land.

3697. Then you consider also its carrying qualities, do you not?—Yes.

3698. That is when you have classified it?—Yes.

3699. Then you consider generally, you have said, the question of prices?—Yes, generally.

3700. I can understand what you mean by "generally," I do not believe anybody can do anything more than consider them generally. I may take it that what you mean is this; suppose in the 15 years previous to the period for which you are fixing the rent, there had been a steady maintenance of prices and produce, that would affect the decision?—Certainly.

3701. On the other hand, if there had been a continued decrease, that would affect your judgment, would it not?—Certainly.

Mr. *Macartney*—continued.

3702. If there had been ups and downs, you would take that into consideration generally?—Certainly.

3703. That is what you mean by "generally"?—To some extent, I take prices into account.

3704. I suppose when you are considering this question of produce, you do not confine yourself, actually, to the produce of a particular farm, but consider the whole produce of the neighbourhood?—Yes, I would deal generally with produce.

3705. That would be an element in your consideration?—I would deal generally with produce in the same way that I would with prices.

3706. That is say, you would consider what crops the land was suitable to carry?—Yes.

3707. And if those crops were crops that were grown in the neighbourhood, it would be an element in the consideration of the rent which you would fix upon the farm?—Yes, what I considered such land could produce, would be an element.

3708. I want to ask you a question or two about the increased letting value of the land; what, in your opinion, would be a fair estimate, of the increased letting value, per acre, of ordinary Irish land? I will put it in this way; would you say that 10*s.* to 15*s.* would be a high, or a low estimate in the increased letting value; I daresay you are familiar with the expression "increased letting value" of a farm applied to the administration of the Land Acts?—Applied to improvements.

3709. Supposing you are a farmer yourself and that you have drained and farmed highly, and that sort of thing, the production per acre is increased; that would be an element in what you would call, the increased letting value of your land would it not?—Owing to the improvement.

3710. Owing to the improvement; that is what I mean?—Certainly.

3711. I want to know in your judgment whether you can say, speaking generally, that 10*s.* to 15*s.* per acre would be a high or a medium or a low estimate to form of the increased letting value of an Irish farm?—I hardly understand the question.

3712. I will put it a little closer: Can you give me any idea what sum per acre would be required to produce an average increase of a shilling per acre in the land you have been over; what would be the sum required to give an increased letting value of a shilling per acre? Can you give me any idea of that?—I hardly understand the question.

3713. What sum expended on the land, would, in your opinion, give that?—That would depend, would it not, on the cost of land altogether?

3714. Quite so?—And the nature of the improvement?

3715. Quite so?—I myself have spent 20*l.* an acre on land that is not worth 10*s.* an acre.

Colonel *Waring.*

3716. With what result?—With the result that it is not worth now more than 10*s.* an acre; and that is not an uncommon thing to find with tenants, that they spend far more on improving a certain piece of land, than they get any return for.

3717. Have

Mr. *Macartney.*

3717. Have you been in Tyrone and Fermanagh?—I have.

3718. And Monaghan?—Yes.

3719. I will take the average land in Tyrone, Fermanagh, and Monaghan, neither the best nor the worst descriptions of land are to be found there. What do you think would be the average sum, put into an acre of land there which would increase the annual letting value by a shilling an acre, taking the farms you have been over?—Well, I cannot say.

3720. Cannot you give any idea?—To increase it one shilling an acre?

3721. Yes, I am taking it roughly?—I am afraid I could not answer that question.

3722. Could you say with regard to the farms you have seen there, the average farm, the average land, whether an increased letting value of 10*s.* to 15*s.* would be high or low or medium, in consequence of improvements. Do you think the average land, there could be improved to the extent of 10*s.* to 15*s.*?—I have often seen land in those districts, as well as I remember, improved to the extent of 5*s.* or 10*s.* an acre, perhaps by an outlay of 3*l.* or 4*l.*

3723. What class of land would that be?—It might be rushy, wet land; a certain amount of drainage would improve that pasture.

3724. It has been grazed, I take it?—Yes; and perhaps that land, by a small outlay, has been made worth considerably more.

3725. That would be entirely confined to grazing land which had been very wet, and was drained, would it not?—Not necessarily.

3726. Do you mean to say that tillage land could be improved to the extent of 5*s.* and 10*s.* an acre?—By drainage, certainly.

3727. What class of tillage land?—A certain class of tillage land might be improved, I daresay 5*s.* to 10*s.* an acre by thorough drainage.

3728. Are you speaking of boggy land, or peaty land; of course that is very porous. I quite admit that, but also the valley lands of those counties; the lowland farms which are not peaty?—It is very difficult to answer.

3729. I do not want to press the question; I only wanted to know if you could give any idea of it?—If I saw the land I could form an opinion.

3730. Have you, in your experience, as a Sub-Commissioner, come across any evidence of deterioration?—Yes, very often.

3731. Would that arise merely from ordinary bad cultivation?—I have put it down to being too much cropped and other causes.

3732. Too much cropped?—Too much cropped; I have found farms that I considered over-cropped, over-meadowed; I have found farms that were deteriorated too, by neglect of drainage.

3733. Have you found farms deteriorated from over-cropping with one particular crop?—Yes.

3734. I mean to say where there was not the use of proper rotation?—Too much cropping, and not sufficient manuring. At the time when tillage paid, there was an inducement to over-crop land.

3735. I did not quite understand your evidence on this point. When you go on a farm do you first arrive at what is a fair rent, that is to say, the reasonable rent which a man would pay for the land, and then do you go into a calculation about the improvements you have to allow the tenant?—The fair rent is the last thing we arrive at.

Mr. *Macartney*—continued.

3736. Your course would be, to estimate the improvements first, would it?—To value the land first, and then deduct for the improvements, the result is the fair rent.

3737. Have you any fixed percentage that you give the tenant for his improvements, or does that depend upon the character of them?—In the case of scattered drains, I generally give 5 per cent. and minor improvements of the kind, I allow them 5 per cent. upon my estimate of the cost of the improvement. That would not apply to thorough drainage, or to reclamation.

Mr. *M'Carton.*

3738. The Sub-Commission allows it?—The Sub-Commission allows it to the tenant.

Mr. *Macartney.*

3739. In dealing with the improvements of the tenant, do you confine yourself entirely to a percentage, or would you give him any share of the increased annual value?—I only apply the percentage to minor matters, such as scattered drains, or making a road, or some small improvement.

3740. When you come to substantial improvements, what do you do?—When I come to substantial improvements, I have explained, that I deal with those differently.

3741. Do you give the tenant the full benefit?—I try to arrive at what the value of the land was, previously to the outlay of the tenant, and then I try to make a fair estimate of the improvability that I think the landlord is entitled to. I add that to the value of the land in its wild state, leaving the tenant to spend what he likes on it. I am talking now of a piece of mountain for reclamation.

3742. More or less do I understand, that in dealing now not with land which has been reclaimed, but which has been cultivated for a considerable time, where the tenant has, by good fencing, and good cultivation, materially increased the yearly value of the land, do you give him the full benefit?—I try to.

3743. Is it your impression, subject to the fallibility of human nature, that you have, to the best of your judgment, in your estimate, given him the full benefit of his outlay?—Yes.

3744. That is to say you do not confine yourself, I understand, to the mere question of per centage?—Certainly not in the case of reclamation or thorough drainage.

3745. I would just like to ask you about the labourers. When you go on the farm, and there are labourers living on it, do you investigate the condition under which they occupy their houses?—Since the passing of the Labourers Act, I think I am right in saying that the Commission do not investigate that. They receive protection under the Labourers Act, and the guardians look after them It used to be a portion of our duty to look into the labourers' question; and if we found a house requiring repairs,

Mr. *Macartney*—continued.

repairs, to order the repairs; or if we found the house too bad to repair, to order a new house to be built. For some years we so acted; but I rather think that, since the passing of the Labourers' Act, very little has been done by the Land Commission in the way of looking after the labourers.

3746. In addition to inquiring into the condition of the house, and so on, do you make any inquiry into the conditions of the lease or the tenure?—Certainly.

3747. Do you deal with this?—In the case of ordering a new cottage to be built, then we would deal with the rent.

3748. With the existing cottages?—With the existing cottages. In the case where we ordered the repairs to be made I think we did not deal with the rent; but we did deal with the rent in the case where we ordered a new cottage to be built and laid out half an acre of ground; then we named the rent.

3749. Could you, from your recollection, say whether the rent which you named in such a case as that was higher or smaller, or what relation it bore to the previous rent?—It is some years since we have had anything to say to that. We had to name some rent that was fair for the labourer to pay to the farmer; the farmer had to build the house. It was generally, I think, something like a shilling a week, or eighteenpence; but it was not to exceed that, as well as I remember.

3750. Was that only a house?—That was for the house and the garden.

3751. You said that in your suggested alteration of the present system of fixing judicial rents, you were prepared to go further than Mr. Bailey. I suppose you read that carefully?—I read a report of Mr. Bailey's evidence.

3752. Do you think the suggestions Mr. Bailey made would do away with the difficulty it was proposed to meet, namely, the contention in the Court?—I think it would; I think it certainly would. Certainly after the experience that tenants have had of the Courts, and the costs of the Court, I think it probably would lead to a great number of settlements.

3753. I am not doing this in a contentious spirit; I only ask you: would it not be quite possible for a landlord and tenant, without availing themselves of Mr. Bailey's suggested machinery, to do themselves what he proposed?—They will not do it, they cannot come together; it would never be done. It is now in their power, you may say, to do it, and the result is that nothing is done.

3754. Pardon me; have there not been a very large number of rents fixed by agreement outside the Court?—Well, I was not referring to those; I was referring to the rents fixed by arbitrators.

3755. I mean without the intervention of any person?—Of course, a great many rents have been fixed out of Court, certainly.

3756. If they are so ready to come to terms, is it not possible for them to do all themselves that is suggested by Mr. Bailey?—Oh, certainly they could settle.

3757. Supposing there was any chance, I mean to say, of their coming to an arrangement; what I suggest to you is, that I have not myself been exactly able (I have read it very carefully) to see how Mr. Bailey's proposal would be any great modification of the present system?—I think it would very much. I think it would offer the parties a facility for settling the rent which they really have not got now.

3758. What facility is it, then, you suggest; I only want it pointed out?—I suggest that a court valuer, or a Sub-Commissioner, should inspect the holding and report (taking improvements and everything into account, in a general way) what he considers would be a fair rent between the parties; and if, within a month, they do not dissent from the suggested rent, I should think that that rent should be declared a judicial rent; and in case they do not agree, they have the Sub-Commission Court to go before.

3759. I assume, and I suppose you assume, that Mr. Bailey meant to do away with the whole paraphernalia of the law; do I take it that is your appreciation of Mr. Bailey's suggestion?—I do not think Mr. Bailey did suggest doing away with that.

3760. That is exactly what I want to know. What I want to get at is this: does your suggestion (which goes beyond Mr. Bailey's) do away, or do you propose to do away, with the examination question in Court in your preliminary step?—Certainly.

3761. I only want to understand what your view is?—Certainly; to avoid the expense of the Court.

3762. You propose to sweep away all the expense of the legal hearing?—Certainly. In the first instance, I would offer the parties the facility of arriving at the rent free of cost.

3763. That is your first step; then suppose they do not take that?—If they do not take that, then I should let them come before the Assistant Commissioners' Court as at present.

3764. You would still keep that in existence; and then you would go through *de novo* all the proceedings of the Sub-Commission Court?—Yes.

3765. That is to say, you would have the hearing before the Legal Commissioner and his two assistants; then the two assistants would go on the farm which had been already examined by your one lay valuer?—Yes.

3766. Whether rightly or wrongly, it is your opinion that that suggestion would materially lead to agreement between landlord and tenant?—I think it would; I think it would be accepted by landlord and tenant in a great number of cases.

Mr. *W. Kenny.*

3767. I think you said that there were hundreds of cases where the tenant would lose his improvements by the absence of the presumption; but I think you limited that answer to buildings?—To buildings chiefly.

3768. And I presume you refer to cases where you, as one of the Sub-Commissioners, would be morally convinced that the tenant had made the improvements, but that he could not prove them?—I have met numbers of such cases, where the appearance of the house itself would tell me that there

Mr. *W. Kenny*—continued.

there was no landlord's money in it, and the evidence would not show that the landlord had ever acquired the holding.

3769. Now in a case of that sort, if you found that the tenant and his predecessors in title had been there for a great number of years, if receipts were produced to you showing that the tenant and his predecessors in title had paid the rent for, say, a period up to a hundred years, and judging by the character of the buildings that they had been made within 50 or 60 years, would you not, without any further evidence, come to the conclusion that those buildings were erected by the tenant, and consequently that he was exempted from rent in reference to them?—That would be a matter of evidence and for the Legal Assistant Commissioner to rule upon.

3770. Yes, but supposing it was left open to you; supposing you found from your examination of the buildings, and from their character, that they had been made certainly within 50 or 60 years, and you found that the tenant and his predecessors had been there holding these lands for 80 or 100 years, without any evidence at all being given before you with reference to who effected the improvements, would you not say at once they were made by the tenant, and consequently exempted from rent?—In the absence of evidence, I should say they belonged to the tenant.

3771. And accordingly you would exempt them from rent?—I would exempt them from rent.

3772. Then, as I take it, you quite agree with Mr. Bailey in his answers to Questions 2761, 2762, and 2763 to Mr. Carson. Question 2763 is this:—"That is what I want to have. So that, if by an inspection you can arrive at the consideration that the thing must have been built by the tenant, apart from any evidence, you give it to the tenant? Yes, that is so," Mr. Bailey says?—I agree with that.

3773. So that in cases of that sort, where the tenant is in possession for a number of years, and by the character of the building you see upon the holding, you find it must have been erected during that tenant's occupancy, apart from any evidence being given, you would allow it to the tenant?—Unless there was some law point that handed that improvement over to the landlord.

3774. Unless the legal Sub-Commissioner had directed you not to, you would allow that?—Certainly.

3775. This question of presumption (I think we have that already from the evidence) only applies before 1850, 20 years before the Act of 1870?—That is buildings.

3776. As to buildings, yes?—Yes.

3777. As to improvements since 1850, the presumption is there made to be in favour of the tenant, is it not?—That is so, I think.

3778. You said also, with reference to substantial improvements in reply to Mr. Macartney, that you treat them differently from some of the trivial improvements; that you try to give the full benefit of his outlay to the tenant?—Yes.

3779. I think you said you could not calculate that by a percentage, but could you give us any average percentage at all; have you allowed

Mr. *W. Kenny*—continued.

the tenants as high as 15 per cent.?—Well, I have not estimated it by a percentage in those cases.

3780. Does it vary according to the district?—Does what vary?

3781. The amount that you would exempt the tenant from rent in regard to?—It varies according to the quality of the land.

3782. According to the quality of the land?—According to the quality of the land.

3783. And I think we were told by Mr. Bailey that it would vary also according to the district; does it?—Yes.

3784. You do not confine it to 3, 5, 6, or 7 per cent.?—No, I do not deal with the percentage. You are talking, I think, of reclamation.

3785. Yes, I am talking of reclamation?—I avoid the percentage in these cases; rightly or wrongly.

3786. You avoid the percentage in these cases?—Yes.

3787. Can you call to mind cases in your experience in which you have ever calculated the percentage at all, and given him as high as 8 and 10 per cent.?—I cannot remember any such case.

3788. In reference to the claim for improvements on the back of the originating notice, you stated, I think, that if you found drains were omitted from the schedule of improvements upon the back of the notice, you would not allow the tenant, unless of course with the consent of the landlord, to supplement his claim?—Unless by consent.

3789. But I think you said you would adopt a different rule in regard to buildings?—Yes, I would.

3790. Why do you draw a difference?—I was assuming in that case that it was an ordinary yearly tenancy, and that there was no evidence given by the landlord, no evidence given by the landlord or by the tenant.

3791. I want to know why you draw the distinction between buildings and drains; are you not restricted in the absence of consent on the part of the landlord by the schedule of improvements on the back of the originating notice?—I think, strictly speaking, we would be, and have to give the drainage and buildings in that case to the landlord.

3792. But in your experience, as I understand, you do not put the tenant to the trouble of withdrawing his originating notice and serving a new one, where the claim that is omitted is a claim for buildings?—I do not remember any case where the tenant has applied for an adjournment on the ground of the building alone.

3793. Do you remember cases in which the tenant has omitted to claim for buildings, and you have, without the consent of the landlord, allowed him the improvements in respect of buildings?—On the yearly tenancy I think I do, where it was plain to me that the buildings were the tenant's. Where I found a mud wall and a thatched house I would most certainly in that case give that building to the tenant.

Mr. *W. Kenny*—continued.

3794. Although not claimed in his originating notice?—Although not claimed in his originating notice.

3795. That is what I want to make clear?—The landlord could say that the drainage was different. It is necessary to give notice of the drainage, because the landlord or his representative may not know anything at all about it, or what evidence the tenant is going to give, unless he is informed by the tenant that he is going to make a claim for drainage.

3796. I suppose, when you go upon the land, the first thing you have to see is whether there exists any drains at all on the land?—We have evidence of the drainage; we look to see whether the drains have been carried out.

3797. Have you found in your 12 years' experience since 1881, that where a tenant has erected his buildings he has failed to make a claim for them on the back of his originating notice?—Constantly we find that, I think; cases where the tenant or his solicitor, or the clerk of the solicitor, writes "no improvements claimed." I have found a case where there was a house on the holding, and other improvements made; it is quite a common thing to find.

3798. In respect of which, if they had been claimed in the originating notice, you would have allowed him an exemption in respect to his rent in fixing the fair rent?—Yes.

3799. Changes, in fact, in the character of the holding, which you would have regarded as improvements, would you; do you say now that that has arisen in a number of cases?—Certainly; I remember cases where his position has been explained to the tenant in court; I have known cases where the tenant would give up his improvements, and rather let the case go on.

Chairman.

3800. What do you say as to that?—I have known numbers of cases where the tenant, on having explained to him in court that he had failed to record his improvements (the landlord objecting to an amendment), and that if the case went on he would forfeit his improvements, preferred to go on, and lose his improvements. In those cases all the improvements would go to the landlord.

Mr. *W. Kenny.*

3801. But, in those cases it was explained to the tenant clearly what would happen if he did not make the claim?—Yes.

3802. And he understood it?—I have known such cases.

3803. And, generally, is not the tenant represented by a solicitor?—He is.

3804. And when he exercises his option of going on with the case and abandoning the claim for improvements which is made for him, he does it with his eyes open?—He does it with his eyes open, and I suppose with his solicitor's advice.

3805. And by his solicitor's advice?—Yes; I have known many such cases.

3806. So that in these cases, the tenant having the option of withdrawing his originating notice, and serving a new one claiming the improvements, if he is entitled to them, really suffers no injury; does it not come to that?—If he adopts that course he gives up his impprovements.

3807. I think you also said that the right of pre-emption which is given to the landlords has acted injuriously as the tenant expects the competition price, and you say, "we cannot give him that"?—Yes.

3808. What exactly do you regard as a competition price, as compared with what may be called a fair price; I am drawing the same distinction as I would draw between a competition rent and a fair rent; what do you regard as being the difference between them, what per cent.?—It would be hard to say.

3809. We have had evidence of percentage given to us already?—Well, I have not read any evidence about that; but my idea is, that the difference between the fair rent and the competition rent capitalised at 20 years' purchase, would represent the tenants' interest in the farm.

3810. Would you go the length of saying, as has been said by a witness here (rightly or wrongly, I really do not know) that the fair rent would be two-thirds of the competition rent?—Well, I have not made any calculation of the kind to enable me to answer that question.

3811. Could not you say from the result of your experience upon that, whether you make an allowance to the tenant on the "live and thrive" doctrine; I mean that the man must support himself and his family out of the land, and so on. As I understood from Mr. Bailey, the competition rent is the rent which the landlord might naturally expect to get in the open market if he was letting the land in his own hands?—To a solvent tenant.

3812. Is that a fair definition?—I think so.

3813. How much would you deduct from that when fixing a fair rent, on an average, would you go the length of 30 per cent.?—I think so, at least 30 per cent.; more.

3814. At least 30 per cent.?—Yes.

3815. Do you take into consideration, in considering the competition rent and the fair-rent, what I may call the personal circumstances of the tenant, would you consider what family the tenant had to support?—Are you talking now, of how I arrive at a fair rent?

3816. I am, certainly?—In dealing with a fair rent, I never deal at all with the competition rent.

Chairman.

3817. You are now upon the question of pre-emption?—Exactly.

Mr. *W. Kenny.*

3818. In fixing fair rent, you do not consider at all what the competition value would be?—No, I do not.

3819. Could you tell the Committee generally, on what principles you, as an individual Sub-Commissioner, have hitherto fixed fair rents?—On my practical experience, and from my knowledge of what such land is worth.

3820. "Is worth" to whom?—Well, worth to the tenant or to the landlord.

3821. Do not you also consider, for the purpose of arriving at that, what it would be worth

Mr. *W. Kenny*—continued.

worth to the landlord if it were in his hand?—No, certainly not.

3822. You do not?—No, I do not.

3823. If it were in the hands of the landlord, lettable to the highest bidder, would it not be worth very much more than the rent you fix upon it?—Certainly it would be worth more.

3824. So you regard it simply from the point of view of what it would be worth to the tenant?—Yes, assuming the tenant has the ordinary interest in the farm.

3825. Then I ask you, in trying to ascertain what the fair rent is, do you take into consideration the personal circumstances of the particular tenant?—No, not the personal circumstances.

3826. You do not at all?—Certainly not.

3827. I wanted to see how far that entered into the calculation?—I understand that you mean the number of children he has got, and so on.

3828. Quite so?—No, I do not take that into consideration.

3829. You do not take that at all?—No.

3830. In fact, you regard him, I suppose, as an unmarried man?—You may put it in that way if you like.

3831. You said that you took prices into account "in a general way"?—Yes.

3832. Then you say you did not use the returns of prices that were sent to you by the Land Commission; and, as I gather from all your answers upon that point, you intended to convey that you did take them into account to a certain extent, but not very much?—Well, I read those returns in the same way as I read the newspaper returns.

3833. The newspaper would not operate on your mind at all?—The accounts of fairs, the market returns give me as much information.

3834. Supposing you were fixing fair rents at the end of the year 1893, you would have regard to the fact that the year 1893 was a very good year indeed in Ireland, would you not?—I will not admit that it was "a very good year;" in some districts it was an exceedingly bad year.

3835. Was it not exceedingly good in a number of districts?—In certain districts it was very good; in others it was very bad.

3836. Throughout the whole of Ireland were rents ever better paid than during 1893?—Rents, as a rule, have been well paid.

3837. In 1893?—Yes; but certain districts suffered very much.

3838. Suppose you were fixing a fair rent at the end of 1893 in a district in which the year had been a good year, would you take that into consideration in fixing that rent, a rent which was to endure for 15 years from 1893; would you take into consideration a probable downfall in prices during these 15 years?—I would take the prices during the past seven or eight years, or 10 years, into account; I deal with the past more than the future.

3839. Would you include the bad year of 1885?—Certainly; I would fix it in 1893 exactly in the same way as I would in 1886 and 1887.

3840. In 1893 would you fix it in the very same way?—Yes, the very same.

3841. So that no matter what the fall might be in prices in an individual year, you would still take the probabilities of the ups and downs of the next 15 years?—I would. That is my practice.

Mr. *W. Kenny*—continued.

Mr. *Brodrick.*

3842. Have you had much experience of fixing rents in the South of Ireland?—Yes, I have; perhaps more so than in any other part of Ireland.

3843. I did not gather from your answers to the Chairman to what extent, not the prices of produce, but the proportion of produce, weighs with you in fixing the fair rent?—Well, I do not go into any calculation of prices and produce in any particular farm; I simply value the land at what I think is fair from my experience.

3844. You do not take into account, then, what the gross produce or capability of a particular farm might be; you only take into account what it is as you see it?—What it is as I see it. I do not make a calculation of what the gross produce of the farm ought to be.

3845. But you take it as you see it?—I take it as I see it, and from what I think such land ought to be worth in the hands of an ordinary tenant such as we find in Ireland.

3846. If you were to go over a farm in a year or two's time, the rent of which had been fixed 15 years ago, you would value that farm as you found it, would you?—Certainly.

3847. Therefore, if it was in an improved condition, you would fix a higher rent?—Certainly, if it was improved I would value it higher, but I don't say I would make the fair rent higher.

3848. And if it was in a very deteriorated condition you would fix a lower rent?—I would value it lower, but I don't say the fair rent should be lower.

3849. Then, if the tenant had allowed the drains to get stopped up, and allowed the farm generally to "go to seed," so to speak, you would fix the rent accordingly?—It is my duty to see that he should not benefit by his neglect.

3850. Notwithstanding, the tenant would be the gainer by his own deterioration, would he not?—No, I said just the reverse. My starting point must be the land as I find it.

3851. I will put it in figures; if you found a farm worth a pound an acre 15 years ago, or upon which the rent had been fixed at that, and you found the farm to be worth now only 10*s.* an acre, would you fix it at only 10*s.* an acre?—If I find a farm now worth 15*s.* an acre, which originally was worth only 10*s.* an acre, the difference being made by the tenant, and it has gone back to the 10*s.* state, I should value it at 10*s.* for a fair rent.

3852. Then in that case the tenant would get the benefit of this deterioration?—No, in that 10*s.* I consider I give the landlord everything he is entitled to, if mine is the proper figure, if I have taken improvability into account.

3853. Then, you do not agree with the evidence we have had from Mr. Doyle, that in a case of deterioration he would not feel justified in fixing down the rent simply because the tenant had allowed the farm to deteriorate?—I thoroughly agree with Mr. Doyle in that.

Mr. *M'Cartan.*

3854. It would be well to understand what you mean by deterioration; whether it is the farm as reduced below the state it was in at the time at which the tenant got it, or at the time at which it fell back into its original state?—I have got in my mind now more particularly the reference made to drainage; I mean, when it has been allowed to be deteriorated in that respect.

Mr. *Brodrick.*

3855. At Question 2931 Mr. Doyle was asked this question:—"You would not reduce the rent in consequence, would you?" And he replied, "No; but as I said before, it is impossible for a valuer not to be affected by the state of the land as he sees it; of course he may make some allowance in his own mind for deterioration by the tenant, and so on, but in practice I think a deteriorated farm is fixed at a lower rent than a farm in fair condition." Then I asked him: "If you found land very foul you would be bound to fix a lower rent on it, would you?" and he replied: "No; I think we should not fix a lower rent; we should fix the rent of it as the land ought to be notwithstanding that, we are bound to." Which do you agree with; is it your practice that you would fix a lower rent according to the condition you found the land in?—I would not allow the tenant to benefit by any deterioration; that is to say, any wilful deterioration.

3856. But surely he would benefit, would he not, according to that?—No, in my opinion he would not benefit.

3857. You mean he would not make a larger sum out of the land because of the rent you fixed upon it?—It would be the tenant's own loss.

3858. Supposing land of that kind were in contiguity to a large village, and therefore favourably situated, would you make allowance for that?—Certainly; I would value land considerably higher so situated.

3859. You have stated that you do not take a competition rent and then make deductions, but you do estimate the value of the improvements, do you not, before you fix the rent?—Yes.

3860. To what extent do you estimate or allow for any sum which may have been given for tenant right?—You mean where a tenant purchases a farm?

3861. Yes?—In my opinion that has put him in the shoes of his predecessor, and I consider he has an ordinary occupation interest; and I make no further deduction from that.

3862. You make no deduction?—No farther deduction. What I mean is this, that if I found the farm had been given by the landlord to the tenant free from fine of late years I would be very much higher in my valuation.

3863. Then to put it in figures, if you found two farms, each in value to the tenant a pound an acre, each of which had improvements proved to the extent of 5*s.* an acre, that one had been bought at a high price for the tenant right, and the other had been taken direct from the landlord, how would you treat them?—I would make a considerable difference in that case. I consider the landlord is entitled to the higher rent in the case of the one where he handed over the farm to the tenant free from fine, and

Mr. *Brodrick*—continued.

equipped, and a considerably higher rent than he would be in the other case.

3864. Then following on that, if a landlord asks you to fix the tenant right after you have fixed a fair rent, on what principle do you go?—That is the value of the tenancy you mean?

3865. That is the value of the tenancy?—Well, personally, I try to avoid fixing it whenever I can. When I have to fix it I make a guess at it somehow; I go as near to it as I can. It is a very difficult thing to do; I have got nothing to guide me.

3866. You make a "guess" at it?—May I say this, that I used to try and work it out by a compensation for disturbance rule under the 1870 Act; but I was given to understand that there were some decisions given by the Commissioners which prevented it being worked out in that way. Well, once I was prevented working it out in that way; I knew no other way of working it out satisfactorily.

3867. You do not go by the amount of the improvements which have been made in fixing the value?—Yes, we consider the improvements, of course.

3868. Do you also make any allowance in amount for any sum proved to have been given for the tenancy?—Well, that would be considered; that would be in evidence what he gave.

3869. Then he gets the value for his improvements twice over; he gets the reduction of rent from the landlord, and also the right to sell the improvements under your system. You reduce his rent; you also allow him to sell them at a capital value?—Yes, he sells his own improvements.

3870. In the case of a man who proves no improvements and has not bought the land, how do you assess the value of his tenancy?—His value, of course, would be less than that of a man who had made improvements. There are no rules laid down; we are all free to arrive at that in the best way we can, and I have always found great difficulty in fixing the value of the tenancy.

3871. You first reduce his rent?—On account of his improvements.

3872. But suppose there are no improvements, then does it occur to you that the reduction you have given him is immediately put into a capital sum if you fix a high value for the tenancy; is he not selling the decreased rent which you have just fixed upon him?—No, I do not think so. I do not quite understand.

3873. You reduce a man's rent from 50*l.* to 40*l.*?—Yes.

3874. Then you fix the tenant's right at 250*l.*?—Yes.

3875. Does not that represent the fact that you have reduced his rent, although he has proved no improvements, and given him the capital value?—It proves that in his case the value of his tenancy is at least worth 250*l.*

3876. What I mean is that really, subject to your practical experience, you do not go on figures either in fixing the rent or the value of the tenancy; you go on a general practical experience of the value of the land?—Yes.

3877. You are not guided largely by prices,

or

Mr. *Brodrick*—continued.

or by the extent of produce?—Only in a general way.

3878. You make a shot at it?—I do not make "a shot" in valuing the land. You may call it "a shot," but I value the land according to what I think it is worth from my practical experience.

3879. You never take such a step in fixing the value of improvements as saying, "You have no improvements; you paid nothing for the holding, and the value of your tenancy is *nil*"?—I have never known such a case. His occupation interest would be worth something.

3880. In your answer to Mr. Macartney you said with regard to drainage that you deduct a percentage of what you considered to be the outlay?—Yes, that is the scattered drainage.

3881. You did not say in regard to value, not the existing value, but the original outlay?—Yes.

3882. Original outlay?—Yes.

3883. Would not the original outlay very often be a different thing from the actual value?—Certainly. Of course, if we met with a case in which the drain had conferred no benefit on the land he would not be allowed anything.

3884. I am asking about value?—As a rule it is outlay.

3885. But if the outlay represents no actual value—— ?—Then he is allowed nothing.

3886. Is not the tenant's outlay very largely, in drainage, his own labour?—Yes, it is generally.

3887. How do you allow for that labour; at what rate?—I allow just the same as if he had hired the labour.

3888. According to the market rate of wages?—Exactly; I do not see why he is not entitled to it.

3889. You say the tenant has a difficulty about proving his improvements; do you find in practice that the landlord's books are usually well posted as regards improvements?—On well-managed estates they are; but there are, no doubt, cases where there are no books at all kept, or where they are kept in a very loose way; in fact, I have constantly met with cases where the tenants have proved the case for the landlord, that is to say, on cross-examination, or direct examination, it was proved by the tenant that certain allowances had been made which the landlord really knew nothing about until the evidence was given by the tenant.

3890. In a very large number of cases, do not you find that the landlord has kept no record at all?—Yes, there is no doubt about it in the case of small estates.

3891. Now, is it not the case that the tenant can almost always bring a neighbour or someone connected with him to swear to improvements which have been made within a recent time?—No, I do not think so. It is often very difficult for the tenant; he keeps no record of his improvement, and I think it is sometimes very difficult for the tenant.

3892. Have you had many cases before you in which tenants claimed improvements made by

Mr. *Brodrick*—continued.

the landlord on English-managed estates?—I have had some, not many; very few of them succeeded.

3893. Exactly?—Generally on the ground that the improvements were not maintained by the landlord.

3894. But you found in those cases that the improvements had been substantially made by the landlord?—Very much so.

3895. That an allowance had not been made for them, at all events; but those were cases in which you were asked to hold that the tenancy was outside the Act?—Yes.

3896. That is a legal point on which you would not decide, is it not?—It is a question of law and fact. In a question like that it is more law than fact, I think.

3897. Do you find that where the landlords have given slate and timber to build houses they are able to prove it in the majority of cases?—In many they are. I have known many cases as regards allowances for slates and timber where, but for the evidence of the tenants, the allowance could not have been proved.

3898. Speaking generally, you would not favour, I understand, any system by which the revised rents, after the 15 years' term, should be fixed simply by a scale of prices existing then, as compared with when they were fixed before?—I do not see how that would work. I think it would be far more satisfactory to the parties to have an Assistant-Commissioner, the Government official, go on the land; they would have more confidence in that system than in a scale of prices.

3899. I ask you now, that being your opinion, that the parties would require that they should go upon the land, that the land should be seen again, whether you do not think in many cases injustice would be done where the tenant unfortunately has deteriorated the soil?—I do not think so, because the inspector will see that he would go generally into the case on the land.

Mr. *Carson.*

3900. Can you suggest to the Committee any way in which, when all these tenancies fall in, you can, by an automatic process, refix all the rents?—I do not think so.

3901. That is what I understand is your evidence?—That is so. I do not think any satisfactory automatic way could be arrived at.

3902. You suggest valuing by a valuer?—By a valuer.

3903. You know, of course, that that process already exists under the rules?—I do.

3904. This is the rule: "The landlord and tenant of a holding desirous of having the fair rent of the holding determined by a valuer or valuers, to be named by the Land Commission for the purpose, may serve upon the Court an originating notice, in Form No. 73, applying to have a fair rent fixed, and consenting that such fair rent shall be determined pursuant to the report of a valuer or valuers appointed by the Land Commission. The Land Commission may thereupon appoint a valuer or valuers, and make

Mr. *Carson*—continued.

an order fixing the fair rent pursuant to the report, unless cause be shown as in next rule. The originating notice, served as above, must be accompanied by the sheet of the Ordnance Map showing the holding." Do you suggest any alteration of that rule?—No, I think that is a good rule; but my experience is this, that the tenants do not understand it, and that any case which has come before me has always been initiated by the landlord or his agent.

3905. So you would suggest that that rule, by the publication of it, should be made more general; that it should be brought more to the knowledge of the tenants?—Well, that would do good; but I should suggest that in every case a Court valuer should in the first instance inspect the farm.

3906. But you say you do not suggest any alteration in this rule. I suggest to you that the rule ought to be made compulsory without the consent of either party?—I would approve of that.

3907. You would approve of that?—I would approve of that as a first step.

3908. Do not you think the real reason that that rule has failed is that, although there is an advantage under it, there is no appeal under it; you think that the landlord and tenant would not agree as to the procedure?—No.

3909. I think it requires the mutual agreement of both?—It certainly does, but I think the tenant, as a rule, is not aware of it, or does not know how to go about it. I come to that opinion judging from the number of cases I have dealt with; they have all been initiated by the agent of the estate.

3910. I know the rule has failed, and I am inclined to agree with you that that is probably one of the reasons. Now, can you suggest in an ordinary case of an application for a fair rent any advantage at all that is derived by the hearing before the Sub-Commission where there is no law involved?—I think in a very large proportion of cases there is very little advantage.

3911. Do you think the tenant likes the field-day?—Oh, he does; the tenant likes it.

3912. Of course he has to pay for it; he has to pay his solicitor and witnesses; but what I would like to ask you (because you have had great experience in this) is this: Is there anything derived from a hearing before a Sub-Commission which might not very well be put upon a sheet of paper in a form settled according to the usual questions asked there, to be filled in by the landlord and tenant, then submitted to a valuer, who would go down upon the land, and see the parties, as you go out now, and settle the rent?—I think that would be a very simple way of doing it.

3913. Would you approve of that; would you think that would work well; for instance, the following form, say: "Your rent, has it ever been increased?" (I am taking what you have heard so often in the Sub-Commission Court.) "Has the rent ever been increased? If so, when? What improvements have you made? Has the landlord allowed any?" Then, upon the other hand, the landlord to be asked very much the same questions. These being submitted, would not you have everything then that you get in an ordinary hearing?—I think, in the majority of cases, we would have all the information that was necessary.

Mr. *Carson*—continued.

3914. And all the information that you usually get?—And all the information that we usually get.

3915. As a rule, in the ordinary case, do you find much divergence of opinion in the evidence?—No.

3916. The evidence on both sides?—No; as a rule there is very little except as to value.

3917. Am I not right in saying that in a great many cases, in fact, in the vast majority of cases, the landlord gives no evidence except as to value?—The landlord very often gives none; not even evidence as to value.

3918. That would apply to 60 or 70 per cent. of the cases, would it not?—I think so; fully that.

3919. So that there is really no divergence of evidence?—No.

3920. And if you limit what I previously put to you by this rule to give the right, either to landlord or tenant, to state a disputed case upon the form, do not you think you would in that case, obviate all difficulty?—Yes; I think that would work.

3921. Can you give us any idea at all of, or have you ever inquired into, what is the expense to a tenant, say of 50 acres, holding at 30*l.* a-year, in an ordinary case, of having his rent fixed?—I lately found out the costs in some 30 cases, each of the tenants paid 1*l.* to their solicitor, and 10*s.* to their surveyor; that was 30*s.* They were very small cases, about 10 acre cases.

3922. Thirty shillings each?—Yes; that was the cost in those cases to the tenant.

Chairman.

3923. Is not there a fee to the Court, too?—The fee is 1*s.*, I think, for the originating notice.

Mr. *Sexton.*

3924. How far have these tenants to travel to come in to the Court?—Those tenants had to come nine or ten miles.

3925. Of course it took them at least a day?—It took them a day.

3926. It may have taken them more?—No; we heard all their cases in one day.

3927. For instance, if you did not conclude the list in the day they would have to come again?—That has occurred.

3928. Two or three days they may have to come the ten miles?—Yes, there is no doubt about it.

3929. Have they not come very often and complained of having had to come away from their work at difficult times?—Yes; we have had many complaints.

Mr. *Carson.*

3930. I should like to ask you as to the system of allowing for improvements which you have told us of. I think I understand as regards the greater

Mr. *Carson*—continued.

greater improvements, if I may so call them, you do not go into the per-centage at all?—No.

3931. Now I want to see exactly how you work that out. You say you first take the previous value; I will take reclamation?—Yes.

3932. You take the previous value, you do not have much difficulty about that?—No.

3933. Because you can usually get some evidence about it?—Yes.

3934. Then, as I understand, you give the improvability to the landlord?—Yes.

3935. Do you give the improvability to the landlord before you have ascertained what increase there is to the letting value?—No. Sometimes I do, and sometimes I do not. Take this case, where the reclamation is not yet carried out, where the piece of the mountain that is going to to be reclaimed is simply fenced in.

3936. I would not call that reclamation?—No, but it is the first step to reclamation. The tenant is going to reclaim two acres of mountain, I would put exactly the same rent on those two acres before the tenant commenced the work as I would when the work was done; in valuing that two acres I take improvability into account.

3937. Although it was not improved?—Although it was not improved; it was fenced in for the purpose of reclamation and going to be reclaimed.

3938. Do I understand you then to say, as this seems important, that if you anticipate improvement in addition to the rent which you find is the fair rent in existing circumstances, you give a rent to the landlord on the chance of improvement?—If I may explain it in this way, I should like to do so: Take a mountain run, a piece of mountain, 20 acres, that is attached to a farm; that mountain run, say, is worth for grazing purposes 1*s.* an acre. The tenant wants to enclose, say, two acres of it for the purpose of reclamation; he encloses it; I go there to fix a fair rent; I see that this two acres has been enclosed, and that the tenant is about to reclaim it; I have to arrive at what is fair in that case. I take it that this two acres is the best of the mountain, it is very likely to be, and, if the whole of it was as good as that two acres, instead of being put at a shilling, I would probably put 3*s.* an acre on the whole run. Then I have to consider the difficulties the tenant will have in reclaiming it, and what it is likely to be brought to by the tenant's outlay, and perhaps I put on a shilling or two shillings in addition to the 3*s.*, and I might think that 4*s.* or 5*s.* would be a fair rent in that case; and he would be entitled to exactly the same if the tenant had spent his money, and the land was reclaimed.

3939. Does not that come back to this, that actually before it is reclaimed you put an increased rent upon it?—Certainly. I put what I consider the fair value, and let the tenant do what he likes with it.

3940. Suppose the tenant changed his mind and thought that, although he had put his fence round, he would not go on with the improvement, under your valuation he would continually be paying the improved rent to the landlord?—He would be paying a fair rent to the landlord for it; he may do what he likes with it.

3941. For the improvability?—Yes, that is what the landlord is entitled to, I think.

3942. Do not you think that if the landlord gets the fair rent, that is all he should get?—It would not be fair if I left out improvability.

3943. Do not you see that what you are doing in that case is that you are really giving something additional upon the assumption that an improvement is going to be made which may never be made?—No; it is nothing to me whether the tenant improves it or not. I have to consider what that two acres is worth.

3944. Then what is the necessity of your telling us about the fencing it round?—Because by that I see he is going to reclaim those two acres, and he tells me he is about to reclaim them.

3945. I pass from that, but I suggest to you that that is rather hard on the tenant. I come now to the case where an improvement has actually taken place, and I put this: Reclamation, there has been actual reclamation carried out; the value previously to the reclamation was 10*s.* an acre (I am taking the whole of the land reclaimed). Then, as I understand, you give the improvability to the landlord, what improvability would you give in that case?—It would be included in the 10*s.*

3946. If the value previously was 10*s* ?—Yes, I take everything into account in that.

3947. Then am I right in saying that no matter what improvement is made upon the land you never give the landlord anything more?—No, nothing more.

3948. Then you do not give the landlord any of what is called the "unearned increment"?—Certainly; I do that in the improvability in the first instance.

3949. I want to know whether there is an improvement or not according to your valuation, does the landlord always get the same in your system of fixing a fair rent?—Certainly, he gets the same.

3950. He gets the same whether there is improvement made or not?—Whether there is improvement made or not; if the improvement is made it must go to the tenant.

3951. I want to understand that. Then let me take this case: Supposing the tenant's improvement by reclamation added on 10*s.* an acre to the land, no matter what the cost of the tenant's improvement was (be it small or be it great) which caused that 10*s.* an acre improvement, you would give the whole of that to the tenant?—Certainly; but, in valuing the land in its wild state, I should take into account the capabilities of the soil, the facilities for improvement.

3952. You go into a field, and you examine it, and in the examination you take into account all its capabilities as one of the circumstances?—Certainly.

3953. And you put the same rent upon the tenant whether that field has been improved or whether it has not?—Yes, the same.

Mr. *Carson*—continued.

3954. And irrespective of what it has cost to improve it?—Yes.

3955. Therefore if the tenant, by a small outlay, say by an outlay of 5*l.* an acre, were able to increase the value of the land 10*s.* an acre, the tenant would get the whole benefit of that?—No, because in valuing the land in the first instance, improvability should have been taken into account.

3956. You do it, do not you see, whether the improvement is made or not, you put the same thing on?—Certainly; I think the landlord is entitled to it. I try to give the tenant the full benefit of his improvement.

Mr. *Sexton.*

3957. I understand when you go into a field, you value it according to its improvability?—Certainly, according to its capabilities for improvement.

3958. That is to say, you value it as if the improvements, for which it has a capability, had been made?—I think it is exactly the same to me, whether it has been made or whether it has not, as to what the landlord is to get.

3959. The question is: When you go into the field you form a certain notion as to how far it can be improved, as to its improvability?—Yes, as regards reclamation.

3960. And you value it as if the improvement of which it is susceptible had been made?—I do not value it in its improved state. I value it in its unimproved state. I try to arrive at what it was worth in its unimproved state, taking all the circumstances into account.

Mr. *Carson.*

3961. Could you give us any idea of land that you find, in its natural condition, worth 10*s.* an acre, what would you say was allowed in that for the improvability?—Land that I put 10*s.* an acre on?

3962. Yes?—Well, I may have allowed two or three shillings an acre.

3963. I do not want to know what you "may have" done?—I cannot give any other answer.

3964. That 10*s.* an acre brings the special quality of the land to your mind; 10*s.* an acre?—I may have allowed two or three shillings.

3965. But do you allow it?—Certainly.

3966. Two or three shillings an acre?—Yes.

Chairman.

3967. Suppose you take 3*s.* for improvability: You told us there were three ingredients, wild value, improvability, and tenants' improvements?—Yes.

3968. If you allow 3*s.* for the element of improvability, you allow 7*s.* then for the advance on the prairie value of the land?—Certainly. In that case the land, by the tenants' improvements, may be worth a pound an acre, and probably is.

3969. I am not speaking about the tenants' improvements, but the other two elements?—Yes.

Mr. *Carson.*

3970. Take a case now. You have allowed 7*s.* for the original state of the land, 3*s.* for the improvability. Supposing the tenant in that case now, by his improvement, at an expense of 5*l.*, increased the value to a pound an acre, would you give the tenant the whole of the next 10*s.*?—That is an imaginary case. I have already said, that 10*s.* is the value of that land and the fair rent.

3971. That is the original value before the improvements?—No, 7*s.* I think, perhaps, in certain cases.

3972. No, the 3*s.* was only the improvability?—My fair rent in that case would be 10*s.*, including improvability.

3973. Seriously now, did you ever really make out one of these sums in fixing a fair rent?—Most certainly.

3974. You did?—You are talking of reclamation?

3975. Yes?—I always try to arrive at what the land is worth in its wild state.

3976. You told me that you fixed buildings in the same way?—No, I do not think I did.

3977. The "great improvements," yes?—No.

3978. You said buildings and reclamation?—Reclamation and thorough drainage; I beg your pardon.

3979. In the buildings do you put the percentage?—If they belong to the landlord.

3980. Supposing they belong to the tenant?—If they belong to the tenant no rent is put on them.

3981. No rent is put upon the buildings at all if they belong to the tenant?—If they belong to the tenant.

3982. No matter how much they increase the value of the farm?—No; no rent is put upon them then.

3983. Then in that case you do not allow the landlord anything for improvability?—In the buildings?

3984. Yes?—No; if the buildings belong to the landlord he receives rent.

3985. Then supposing the buildings cost a hundred pounds, suppose they add to the letting value of the farm 10*l.* a year, you give the whole of that to the tenant?—Yes.

3986. I want to know whether, as a matter of practical experience, in the majority of cases that come before you, it is not usual for the leading Commissioner to ask, "Does the landlord claim the buildings"?—It is quite a usual question to ask.

3987. The first question, or one of the first, is it not?—Yes.

3988. And am not I right in saying that the landlord, as a rule, does not claim them?—He very often does not claim for them.

3989. Unless he is able to produce books?—As a rule, I think I may say he does not claim them; certainly he does not, in Ulster, claim them as often as outside Ulster.

3990. I take Tipperary; I think you have been a good deal in Tipperary?—Yes.

3991. In Tipperary, now, for instance, as a general rule?—They very often do not claim them.

3992. Is not that mostly so?—Well, I cannot say. I would not like to go further than saying that they very often do not claim the buildings.

3993. And

Mr. *Carson*—continued.

3993. And in a great many cases that come before you there is really no controversy on the buildings question at all, is there?—That very often is the case, no doubt.

3994. Of course you are aware that the tenant has the right to see the landlord's books if he wishes?—Well, I was not aware of that.

3995. Then, of course, you can tell me nothing about it if you were not aware of it. With reference to the necessity of an endorsement of the originating notice, do you suggest to the Committee that it would be better to do away with the endorsement of the particulars of improvements?—No, I do not at all suggest that.

3996. Do you think it is absolutely necessary?—I think it is very necessary.

3997. Do the Commission ever refuse to allow the particulars to be served at any time, and, if necessary, to grant an adjournment?—I have never heard an adjournment refused where a tenant applied for it on the ground of his improvement; never.

3998. You said that there were some cases where the tenant preferred to give up his improvements rather than have an adjournment?—I have met that extraordinary case, but on investigation I have very often found that the improvements were not very much.

3999. I was just going to ask that. Was it not really because there was nothing substantial in them?—As a rule, that is the case where they give up their improvements.

4000. Do you consider that any injustice has ever been caused by reason of the particulars of improvements being required to be endorsed on the originating notice?—Yes; I have seen it.

4001. In how many cases?—I cannot say in how many, but I have often found that to be the case. Only the other day I was on a farm where the tenant had omitted to state his improvements, I found, when on the land, considerable improvements in the way of drainage.

4002. Did you give them to him?—No; we could not give them to him.

4003. Why?—Because he had not claimed them on his notice.

4004. Surely if you found the improvement on looking at the land, and saw that it must have been made, or a portion of it, during the tenancy, you would give it to the tenant?—We cannot give it to the tenant under such circumstances.

Mr. *Carson*—continued.

4005. Why; is it because he did not prove it in court? Do you know the case of Wall *v.* Foy's School, a case that Mr. Bailey referred to, and which he said his Sub-Commission had always acted upon? This is a quotation from Cherry relating to it: "In cases where there is no presumption of law in favour of the tenant under this section, there may, however, be a presumption of fact, so as to establish his claim to the improvements without strict proof of their having been made by him or his predecessors in title. Thus, where buildings from their age appear not to have been erected before the commencement of the tenancy, the court may presume that they were erected by the tenant." Would not you apply that in the case of buildings?—I think we could not apply it, when the tenant neglected to claim the house in court. In the case you have just mentioned I think the buildings would have been claimed on the notice, and evidence given about them.

4006. No, it is evidence the Commissioners would have seen on the land?—The tenant would have claimed for them already on his notice.

4007. They are plainly cases he could not prove. Could you suggest to us then, any alteration in the rule with reference to these particulars which would obviate the difficulty?—I think not.

4008. The difficulty arises not from the Act of Parliament, but from the notice?—From neglect of the party to see the notice properly filled up.

4009. Would you suggest that we should enact in any way that it should be sufficient if the Commissioners themselves, on going upon the land, saw the improvements; would you say that that should obviate the difficulty?—Something might be done.

4010. It is important that the tenant should not be deprived of his improvements?—It is important.

4011. Do you see any difficulty in that, that the rule should be so framed that it would not apply if the Commissioners upon the land saw the evidence of the improvements?—It would be difficult to make such a rule; the landlord or his representative should know what improvements were to be claimed.

Tuesday, 12*th June* 1894.

MEMBERS PRESENT :

Mr. Brodrick.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Fuller.	Mr. Sexton.
Mr. Leese.	Colonel Waring.
Mr. Macartney.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Colonel E. R. BAYLY, again called in; and further Examined.

Mr. *Fuller*.

4012. WILL you specify, as shortly as you can, how far the interests of the landlords are affected injuriously, first, by the administration of these Acts?—I do not think they are affected injuriously at all. It is a loss to the landlord to have his rent reduced; but if he gets what is fair, I consider he is not injured.

4013. Then, in no part of these numerous Acts that we have to consider do you feel that the landlords have anything to complain of?—As a matter of fact, they have suffered very much in the reduction of rents.

4014. In the Acts of Parliament, I mean, that you have to assist in administering?—I think they have got the "best end of the stick."

4015. Now, perhaps, you will kindly tell me, in your experience, how far you think the tenants are injured by the administration of these Acts?—I think they are injured sometimes; they are injured very often by not being allowed for their improvements.

4016. Then, as regards improvements, you think they do not get sufficient compensation?—In many cases they do not get any, and in other cases they only get part compensation.

4017. Then, in that case, I understand, if there are improvements, and the tenant does not get the advantage of those improvements made by himself, those improvements become the property of the landlord?—Yes.

4018. And, therefore, am I correct in saying this: that the landlord is greatly benefited by these Acts of Parliament?—I consider that a landlord who acquires a tenant's improvements is a gainer; in fact, decidedly a gainer; he gets more rent upon the particular farm.

4019. Then I gather from those questions I have asked you that in no case does the landlord lose, and in many cases he may win?—If the Act is fairly administered I do not think the landlord in any case loses.

4020. And in some cases he may win?—That is my opinion.

4021. Now I should like to know exactly the particular points where the landlord wins. I want to draw your attention to one or two points upon this matter, because I am not versed in Irish land law. It has been stated in evidence before that the landlord has a power, when a judicial rent is fixed, to have the specified value put upon the tenant's holding?—Yes.

Mr. *Fuller*—continued.

4022. That is so, is it?—It is.

4023. We have been told also that that specified, or true, value is lower than the competitive value?—Yes.

4024. And that the landlord can buy back, under the principle of pre-emption, the tenant's holding at the price that is fixed when a judicial rent is placed upon the land?—Not when the value of the tenancy is fixed; it does not give them the right until the tenant chooses to sell; but in the case of pre-emption, where the tenant takes proceedings to sell his farm, the landlord has the right of pre-emption. Fixing the value of the tenancy is a different thing to the pre-emption.

4025. It is part of the administration of these Acts, is it not?—It is part of the Act.

4026. Therefore I gather that, supposing the tenant wishes to leave his farm and to sell his interest, the landlord may buy back that interest at the specified value fixed at the time the judicial rent is originally fixed?—That is so.

4027. In that case, supposing that the tenant makes some considerable improvements between the date when the rent is fixed and the date when he chooses to go out of his farm, will that same sum of money that is fixed as a specified value be the same, notwithstanding the improvements that the landlord would have to pay for if purchasing the tenant's right?—The landlord would purchase that farm at a price fixed by the Sub-Commission perhaps 10 years previously.

4028. Even if the tenant had made large improvements?—I think so; and that is why I think it would be very unfair to the tenant to have a price fixed perhaps numbers of years before he may wish to sell.

4029. Therefore you think the Act which deals

Mr. *Fuller*—continued.

deals with this question (I do not know which Act it is) is unjust to the tenant in that respect where there is a specified value fixed?—I think so; I think it is unjust. I think it acts as a hindrance to that man in improving his farm.

4030. Exactly; I was going to ask that very question?—The value of the tenancy may be fixed at 150*l.* or 200*l.*; he may wish to make improvements, and I can fancy the tenant being debarred from making improvements by knowing that the value of his farm is fixed at 150*l.*, and that if he made the improvements he would still only get 150*l.* for the farm.

Chairman.

4031. A Member of the Committee would be glad to know how far all these answers you are giving to Mr. Fuller are based on hypothetical cases, or how far they are a description of cases that arise in your experience and practice?—I am confining myself to a description of cases which arise. I may say I have never heard of a case, after the value of the tenancy has been fixed, of a tenant selling; it has not come under my observation.

4032. Then your answers to Mr. Fuller are answers based upon your view of what you would do in certain cases if they should arise?—Yes.

4033. Hypothetical cases?—To a certain extent.

Mr. *Fuller.*

4034. Then your experience in Ireland as to the working of the Land Acts upon that particular point that I have referred to is, that they are generally injurious to agricultural prospects in that country, in the deterrent influence they place upon the tenants against improvement?—That is my opinion.

4035. That is one case in which you think that the Acts at present are injurious to the tenants. Now let me ask you as to another case. As regards fee-farm grants, I understand that in those cases all tenants who enter the court for a judicial rent would be rack-rented; that is to say, that the judicial rent would be fixed upon all the improvements they have made?—Their improvements are confiscated; they go to the landlord.

4036. And do you consider that that is a serious injury to the tenants?—I do, most certainly.

4037. When we speak of being "rack-rented," you mean that the tenant would be rented on his own improvements?—He would be rented on his own improvements.

4038. You consider that that is a second injury to the tenants?—I think it is a very great injustice.

4039. In your experience, have you known any tenants debarred, or not debarred, but shrinking, from coming before the courts in consequence of the arrears of rent?—Yes, I have; I have constantly heard, when I have been going over lands, of adjoining tenants that have been debarred by arrears of rent from coming into court.

4040. What is the bar?—They may feel that the agent may be hard on them about the arrears, and may try to recover these

Mr. *Fuller*—continued.

arrears, if they go into court. I cannot say what the bar may be. There are many reasons; arrears certainly keep tenants out of court.

4041. And do the tenants, in your experience, generally feel aggrieved upon that point?—Certainly.

4042. Then this, perhaps, is more a legal question, as regards the costs. I understand that the costs, whether the tenants win their cases, or whether they lose them, it is all the same, they have to pay the costs?—That is the practice, that each party bear their own, except under exceptional circumstances.

4043. Is not that judge-made law?—I cannot answer that question; it is the practice.

4044. You and I are not lawyers, so we do not know; but, as a matter of fact, they do. Is that considered a hardship, in your experience, that they feel; when they win their cases they have to pay costs?—It is the practice; they are well accustomed to it now.

4045. You have not heard it alleged?—I have heard that brought up as a grievance; but it has been the practice now for a number of years, and people have become reconciled, more or less, to it.

4046. Like an old sore?—Yes.

4047. I think I understood you to say that you, in your valuation, always assume or presume that the repairs are done by the tenants?—Yes.

4048. You take that for granted?—I take that for granted.

4049. We have had this evidence given before us in Question 1460 of Mr. W. F. Bailey's evidence: "Is not there a provision of the law by which, when the landlord can prove that he has made, and substantially maintained, permanent improvements, he can prevent a fair rent being fixed at all? (*A.*) Yes, that is so." At all events, as far as I gather from the former evidence, that is to say, the legal evidence, the presumption is that the landlord does the repairs, because the tenants, if their tenancy is over 10*l.* value, have to prove their improvements; is that so?—Over 10*l.* value, they have to give notice; they have to insert on the originating notice their improvements.

4050. They have always to give evidence as to their improvements?—Oh, yes, they have to prove their case in court.

4051. Then the presumption in that case is that the landlord does the improvements, if the tenants have to prove them?—I do not think so; as a matter of fact, the tenants maintain the improvements.

4052. What I mean is this: I should have imagined that if the landlords did all the repairs you would assume at once that all improvements in the way of repairs would be done by the landlord; if, on the other hand, all the buildings and so forth are done by the tenants, you would assume that the tenants would get the advantage of all the improvements; and if the landlord does not do those repairs, then he would fail to get the advantage of the improvements, would he not?—The landlord.

4053. Yes?—Certainly, if he does not maintain the improvements. He makes no improvements as a rule.

Mr. *Fuller*—continued.

4054. No, he does not?—He makes no improvements.

4055. Then as far as I understand the law, the law makes the tenant prove all the improvements he has made, when, as a matter of fact, by the custom of the country, the tenants do all the improvements, and ought not to be forced to prove their improvements?—That is so; they have to prove their improvements.

4056. Is that a hardship, do you think?—I think it is a hardship. I think it is a hardship, because it is often exeeedingly difficult for a tenant to prove some of the improvements.

4057. And inasmuch as it is the custom of the country that the tenant should do all the improvements, does it not appear to you that it is a great hardship, and a great blot in these Acts, that the tenant should have to prove the improvements. Ought not the landlord to prove his improvements, rather?—My idea is, that the improvements should all be assumed to be the property of the tenant.

4058. In the case of an Ulster tenant, he has not to prove his improvements, has he, by evidence of his improvements?—There are certain improvements in Ulster, under the Ulster tenant-right custom, which are admitted; he would not have to prove them.

4059. What sort of improvements would they be?—Chiefly buildings and fences.

Chairman.

4060. He has to prove the custom?—He might have to prove the custom, if required.

Mr. *Fuller.*

4061. Then in Ulster, as I understand, the tenant simply proves that it is the custom for the tenant to do the repairs, and if he shows that, he need not trouble himself any more about any improvements; they may be given to his credit?—Only certain improvements.

4062. I am speaking of Ulster?—It applies to Ulster.

4063. There is a distinction, is there not?—Not in maintaining the improvements.

4064. In maintaining?—Not in maintaining.

4065. I am speaking of improvements generally?—Yes, there is a difference as regards improvements between Ulster and the rest of Ireland.

4066. Is there any reason why Ulster should have that distinction?—I do not see any reason why there should be any distinction.

4067. In arriving at a fair letting value, as I understand, your system is to go upon the land and to value the land in certain classes, good, bad, or indifferent. Do you consider that the value of the land is improved in consequence of buildings that have been built near the holding?—That would be in the case of a farm near a village.

4068. Suppose a man is on a farm, and the buildings all belong to him; the sheds, and so forth; and the land is worth, we will say, a pound an acre; in your estimate do you consider that the buildings that this tenant has put upon the land considerably increase the value of that land?—Certainly they do.

Mr. *Fuller*—continued.

4069. They do?—Certainly they do; if it is a farm that requires buildings, of course, the putting of buildings on that farm increases the value of the farm.

4070. I want to be clear upon this system of valuing. As I understand, you go upon the land, and you value the land as it is; you put a value upon it?—Yes.

4071. Supposing that land is worth one pound an acre as it is, without any buildings at all? That is what we have had in evidence before: that no buildings are to be taken into consideration; that you value the land as it is. You have just told me that you do put a considerable value upon buildings as creating a better culture to the land adjacent?—If the buildings are the property of the tenant I should not trouble myself to put a value on the buildings, because I would only have to take it off again to arrive at a fair rent; if the buildings belong to the tenant I leave them out.

4072. Then you value the land, not as if there were no buildings, but as if there were buildings, when the tenant erects the buildings close to him?—I value the land, leaving out the buildings, if the buildings are the property of the tenant.

4073. That is where I cannot get myself quite clear; either you must value the land with the buildings, or you must value it without the buildings. Do you take a piece of land in this way: supposing it were a mile away from any buildings at all, that land would be worth so much an acre?—Yes, as regards a fair rent.

4074. As regards a fair rent; if there were no buildings near it?—Yes; it might be a farm, we will say, worked with another farm in which buildings are.

4075. I am taking a specific piece of ground, three or four acres, it may be, with a house adjoining, which you have to put a value upon. Do you value that land in the first instance as if there were no buildings at all, and put a value upon it?—I do. If they belong to the tenant I leave the buildings out altogether; I do not value them; if, on the other hand, they belong to the landlord, I should try to make an estimate of what would be fair to add to my land valuation on account of buildings.

4076. Then you told me just now that you consider that buildings do add materially to the value of the land adjacent?—Yes, to the lands, but not to the adjacent lands.

4077. You consider the value of the soil, simply, first; is that it?—Yes.

4078. Then you add afterwards?—If the buildings are the landlord's, I add.

Mr. *Sexton.*

4079. Suppose you valued the land and the buildings together in the first instance, would the valuation in that case be the same as the valuation that you ultimately arrive at by valuing the land alone first, and then adding, in case the buildings are the landlord's, the value of buildings?—It ought to be the same, I think, exactly the same.

Mr. *Fuller.*

4080. We had a case put before us by Mr. Bailey, a supposititious case, Question 1520, or rather it began at 1517. At the end of that question, on the question of improvements, Mr. Bailey says this: "We will take now as an instance, to put it clearer, the case of an acre of land which in its present condition is worth a shilling an acre unreclaimed" (I am now on the question of unreclaimed land), "you may spend on reclaiming that, say, 5*l.* in money; that may increase the letting value of the acre to 10*s.* a year." Then he goes on in answer to the next question to say: "In that case 5*l.* represented the amount of the cost of the work done, allowing there, we will suppose, 5 per cent. upon it," that is to say, 5*l.* laid out in improving an acre of ground, the 5*l.* at 5 per cent., added to the value of that land 5*s.* an acre, that is one shilling the previous rent, and 5*s.* more in the additional value of what was done by the tenant's 5*l.* Then he goes on to say, in answer to Question 1520: "10*s.* is the present letting value of the acre; 5*s.* of that goes to the tenant as against his improvement work; there is another 5*s.* left. One shilling of that will be represented by the original value of the acre before the improvement was commenced; then there is the 4*s.* which represents the increased letting value which has accrued from the making of the improvement over and above the cost of the improvement work; that 4*s.* is under the present reading of the law the property of the landlord and goes to the landlord." What I want to ask is this: In that particular instance of the case supposed to exist, the tenant occupied land worth a shilling an acre; he lays out 5*l.* in improving it, and when he comes to the judicial rent the rent is considered to be worth 10*s.* an acre instead of one shilling; the result is that the tenant is allowed 5*s.* for his improvement at the 5 per cent. value; he has to pay the original shilling an acre which he had to pay before, and the landlord gets the advantage of 4*s.* upon that land?—I cannot follow Mr. Bailey in that.

4081. You would not value in that way?—No.

4082. Just let me put in this way:—Supposing a tenant has an acre of land at a shilling an acre, and suppose he reclaims that land, and lays out 5*l.* in improving that land, and then when he comes to ask for a judicial rent, you, as valuer, might put a value of 10*s.* an acre upon it, might you not?—If the land is worth it; if one shilling is a fair rent for the land, any additional value given to that acre by the tenant's outlay, I consider, belongs to the tenant.

4083. You do; whatever it may be?—Whatever it may be; if the one shilling is a fair value.

4084. You would, in your valuation then, suppose that a shilling an acre is taken for the unreclaimed land, as fair rent by the landlord, he lets it at that price with all its inherent qualities?—Say, as a tract of mountain attached to a farm.

4085. No; "mountain" is a very different thing; keep to the one acre of land, if you will, unreclaimed land. I assume that the landlord allows the tenant to have that for 1*s.* an acre,

Mr. *Fuller*—continued.

with all its inherent qualities, and he may do what he likes with it; when you come to value that land after it has been in the occupation of the tenant for many years, you look at it and find it is worth 10*s.* an acre, upon what principle would you assess that fair rent?—I would make an estimate of what I considered that acre was worth considering the quality of the soil. From the natural advantages it might have for being reclaimed, I might say that it would be worth 3*s.*, taking those advantages into account; whereas for a bit of wild grazing, and nothing but grazing, it might only be worth 1*s.* There may be good qualities in the soil, and a good subject for reclamation, in that case, when I examined the soil and the facilities for reclaiming it, I might consider that 3*s.* or 4*s.* might be fair for it before any outlay is expended by the tenant.

Chairman.

4086. I do not want to interrupt Mr. Fuller's examination, but in that case the landlord has taken 2*s.* less rent than he ought to have had, in your opinion?—No, Sir.

4087. He let a thing that, without improvements, owing to its improvability, and its capacity for improvements, was worth, as you say, 3*s.* an acre, for 1*s.* an acre?—It was worth 1*s.* an acre, as part of a mountain tract, say, for grazing purposes. Improvability would not come in as long as it is only used for grazing.

Mr. *Sexton.*

4088. I should like to ask whether you add the 2*s.* an acre to the 1*s.* for latent capacity not called into action, and not to be called into action until the improvement is made?—I would value the acre, and consider what it is worth.

Chairman.

4089. As it stands?—As it stands, taking all the facilities there may be for reclaiming it; there may be some natural advantages that it may have, and it may be well worth to the tenant 2*s.* or 3*s.* an acre, even if he keeps it in its original state.

Mr. *Sexton.*

4090. Take the use to which it is applied at the time; a piece of rough mountain; it is worth a shilling an acre for that use, is it not?—As part of a large tract.

4091. For that use?—Yes.

4092. But assume a certain improvement to be made that would enable the tenant to apply it to another use, the latent capacity being developed by the improvement, it would then be worth 3*s.*?—That is not what I mean. I would not touch the tenant's improvement; and my intention is to let him enjoy the improvement.

4093. The full value of the improvement after that improvement is made would be 10*s.* an acre; is not that the assumption?—Yes, that might be.

4094. Would not the 3*s.* be the fair rent for the landlord after the land had become worth 10*s.* by the improvement?—In my opinion, before the improvement was made.

4095. Take it *after*?—Or *after.*

4096. When the land had been made by improvements worth 10*s.* an acre, and was actually

Mr. *Sexton*—continued.

worth 10*s.* an acre for rent, then the 3*s.* would be the fair proportion for the landlord?—I think it would be worth the 3*s.* even before the improvement was made.

4097. Is it worth any more after?—Not to the landlord.

4098. Is it not worth more than the 3*s.* to the landlord *after?*—Not as rent.

4099. Precisely; I am speaking of rent. When the letting value by improvement has been increased from 1*s.* to 10*s.*, when that has been done, the fair rent to the landlord would be 3*s.*; is that what you say?—Yes.

Chairman.

4100. There are three elements, we were told; I think you told us yourself; which were regarded; the value of the land, its improvability, and then its state of value after the actual improvement was effected?—Yes.

4101. Now, you say in this case that 3*s.* represents the full rent, a sufficient rent, for the value of the land, plus improvability?—No.

4102. That is what you have just told Mr. Sexton, surely?—The 3*s.* was the fair rent. I said 3*s.* was the fair rent after the improvement or before.

Mr. *Sexton.*

4103. So far as I can gather from your process, when you see land that is capable of being improved, especially wild land, you put on as a fair rent, before the improvement is made, the same rent that you would put on if the improvement had been actually made?—I have to consider its value.

4104. But is that so; do you do that. Do you treat the acre as if it had been improved, although it has not been improved?—I treat it as I find it; if it has been improved, I try to find out what it was before it was improved.

4105. But suppose it had been actually improved, and the 10*s.* value acquired upon it; would you put any more rent upon it than you had put on already in the 3*s.*?—No.

Colonel *Waring.*

4106. That is your practice, is it?—That is my practice.

Mr. *Fuller.*

4107. Then why should you raise the rent from 1*s.* to 3*s.*, if the landlord had fixed the value at 1*s.*?—I have tried to explain that before; I may not raise it at all from the 1*s.*; there may be no improvability, in it. I have taken a case where I considered there was improvability; that the qualities of the soil were such that it was well worth the reclaiming.

4108. The case I want really to be clear upon in my own mind is this, that where you have found that land has been reclaimed, and that that land in its original state only paid 1*s.* an acre, and where you found that that, by being reclaimed, comes up to the value of 10*s.*, I want to know how you apportion that 10*s.* as between tenants' improvements and the landlords'?—I do not deal with the 10*s.* My method is this, to try and arrive at what that land was worth before there was any outlay in making the improvement, and that is the value I give to the landlord, taking all natural facilities into account for improving it.

Mr. *Fuller*—continued.

4109. Then why not 1*s.* an acre, then?—If it is only worth a shilling, I would only give him a shilling. What the landlord has charged does not concern me.

Chairman.

4110. I think it will, perhaps, end this matter, Mr. Fuller, if you will allow me to put this question in the form in which Mr. Russell put it to Mr. Bailey, when he was here (1187) "Let us assume a case," (will you kindly attend to this question?) "as brought before you, for hearing; it is proved that a tenant has expended, say, a hundred pounds on improving a holding; that the expenditure of the tenant has increased the letting value of the land from, say, 10*s.* to 15*s.* an acre"?—May I ask: Is Mr. Bailey talking of reclamation?

4111. This is a question put to Mr. Bailey as to how he would deal with this case: Where a tenant has expended 100*l.*, where the result of that expenditure has been to increase the letting value of the land by 5*s.* or 50 per cent. from 10*s.* to 15*s.* an acre, would you deal with the hundred pounds that the tenant has expended, and simply give him credit for that, and then let the whole of the increased letting value consequent upon his expenditure of a hundred pounds, go to the landlord? Now you understand we are not asking you, as Mr. Russell was asking Mr. Bailey, as to the point of law; we are asking you what principle you would adopt if a case of that kind came before you?—My idea is that in that case the 10*s.* is a fair rent. I think that is the opposite of what Mr. Bailey said.

Mr. *Sexton.*

4112. Will you read it?—"That the expenditure of the tenant has increased the letting value of the land from, say, 10*s.* to 15*s.* an acre."

Mr. *T. W. Russell.*

4113. That is an increase of 5*s.*?—On the tenant's outlay.

Chairman.

4114. You say you would give the benefit of the whole of that increase to the tenant?—Yes, the whole of it, unless the law prevented my doing it.

Mr. *Brodrick.*

4115. Suppose the number of the acres of the holding was 50 acres, that 100*l.* had been expended in improvements, and that the improved value was 5*s.* an acre, how much of that 5*s.* an acre would you put upon the rent, and how much would you give the tenant credit for?—I look upon the improvement as the property of the tenant, and that he must have the full advantage of it, the whole of it.

4116. You do not agree with Mr. Bailey?—It appears not from my answer. I have only just seen this.

Mr. *Sexton.*

4117. In case you were a member of a Sub-Commission, with Mr. W. F. Bailey, barrister-at-law, in the chair, and you were about to inspect a farm upon which a tenant had expended a hundred pounds,

Mr. *Sexton*—continued.

pounds, and increased the letting-value from 10*s.* to 15*s.* an acre, would you take the law from Mr. W. F. Bailey?—I am obliged to take the law from my legal colleague.

Chairman.

4118. Upon that point, may we ask whether you receive an instruction from your legal chairman before you go to these valuations?—As a rule, no.

4119. As a rule, no, you say?—As a rule, no; but as to any important point we have heard the matter in Court, and we generally would refer the matter then to our legal colleague when we were making up the rent; we would discuss the matter then, not before we went on to the land.

Mr. *Brodrick.*

4120. Does not the practice come to this: that you, fixing the improvements, begin on the land; they do not come before the legal Commissioner at all, except in your report?—That is so.

4121. Consequently you do not hear of Adams *v.* Dunseath in the matter at all, practically?—We should, in legal points, refer to our legal colleague.

Mr. *T. W. Russell.*

4122. Will you listen to this: Question 1188,—he has said that the increased letting value would be wholly given to the landlord; I ask him, then, this question: "That is the law now, is it?" And his reply is: "That is the law; he merely gets the money value of the work done." Then I put 1189:—"And the whole of the increased letting value consequent upon that expenditure goes to the landlord?" And Mr. Bailey replies: "Quite so." Then I go on: "You are not at liberty to give the tenant any credit for it?" And he answers: "No." Now, Mr. Doyle having stated that he agreed with the description Mr. Bailey had given as to the practice of the Sub-Commission Court, if you were sitting with either Mr. Bailey or Mr. Doyle, as legal Sub-Commissioners, and they laid down that as the law, you would be bound to accept it, would you not?—Certainly.

Mr. *Brodrick.*

4123. In practice you find they do not lay that down?—In important cases they lay down the law.

Mr. *Macartney.*

4124. You have described how you have dealt with the tenants' improvements in the questions put to you by members of the Committee. What I want to ask you is this: in so dealing, and in so fixing a fair rent, did you understand that you were acting in accordance with the legal view held by the legal Sub-Commissioners of your Commissions?—Certainly; I would never act contrary to their view.

4125. You understood that in so apportioning the rent it was in accordance with the views of the legal Sub-Commissioner?—I would not consult the legal Sub-Commissioners on a question of value; I make my own estimate. I consult him as regards any law point about the right to certain improvements, or such matters.

Mr. *Macartney*—continued.

Mr. *Fuller.*

4126. Do you consider that if the law at the present moment takes away a portion of the improvements of the tenant, made by the tenant, and hands that over to the landlord, that that is an injustice to the tenant?—Most certainly.

4127. Then the result, as I understand from you, generally is that these Acts, as they are at present, are absolutely and entirely in favour of the landlord; and in very many important instance are injurious to the interests of the tenant?—That is my opinion.

4128. And is it not the fact, in your experience, that a very large proportion of the interests in the land belong to the tenant?—Certainly, it does in Ireland.

4129. And is it very nearly equal to that of the landlord?—Very nearly equal to the landlord, as a rule.

4130. Therefore it makes it doubly unjust that the law should be entirely in favour of one side, and in many instances against the interests of the other?—There are cases, no doubt, of that kind.

Mr. *M'Cartan.*

4131. You told us about the schedule of improvements, that sometimes they were a very unsafe guide to rely upon; that the tenant could not prove them all in Court. Are you aware that it is almost impossible for the tenant, in giving instructions to his solicitor, to particularise the improvements?—I am sure he often finds great difficulty in remembering his improvements, which may been made long ago, and no record kept of them.

4132. And do you know that the practice, on the part of the well-informed solicitor, is to make him put down a sufficient number of improvements because he is able to prove all within what he has put down, but cannot go outside them, in the schedule, is not that the fact, that he cannot go outside what he has in his schedule?—Yes.

4133. And it is competent to him to prove what he has made within the schedule?—Yes.

4134. He is not allowed anything except what he proves that he has made himself, is he?—He is not allowed anything except what he proves in court.

4135. I believe it is only in cases where the valuation is over 10*l.* that the tenant is obliged to put down the improvements?—Yes; that is so.

4136. And it is only the tenant who is obliged to put them down; in the case of the notice served by the landlord, the landlord is not obliged to put them down?—No.

4137. I see this under Rule 108: "Where an originating notice to fix a fair rent shall be served by a tenant in case of a holding of which the Poor Law valuation shall not be under 10*l.*, such originating notice shall state, in a schedule endorsed, the particulars of any improvements in respect of which evidence is intended to be produced," but there is no such provision made where

Mr. *M'Cartan*—continued.

where a landlord serves an originating notice?—No; he has, you may assume, no improvements to record. He goes into court to have the rent perhaps raised.

4138. I believe when the Act passed in August, 1881, a tenant was not required to state the improvements on his notice; it was only after the Lords' Committee of 1882 that it became necessary for the tenant to do so, and it was on the suggestion of that Committee, at all events it was under the rules made on 12th December 1883; do you know that?—I think my recollection is that at first the improvements were not notified on the originating notice, as well as I can remember.

4139. Not at the first?—Not at the first.

4140. I suppose you are aware that improvements made by a tenant are usually made from year to year, and that he keeps no entry of improvements at the time he makes them?—That is the case.

4141. In your experience did you ever meet with a case where a tenant produced a book in which he had made entries of the improvements as he had made them?—No, I do not think I ever have. He may prepare a statement for the court.

4142. But I suppose you have frequently met cases where the landlord had made entries of any contributions he had made?—Oh, yes, on all well-managed estates that record is forthcoming.

4143. Now I understand it is very difficult sometimes for the tenant to prove the improvements made by his predecessor in title?—He experiences great difficulty sometimes.

4144. Particularly in the case where the improvements are made by some person who is dead, his father or grandfather?—His predecessor, he may have bought the farm, especially in those cases where the tenant buys the interest it is difficult.

4145. I do not think it is generally very easy even for the oldest man in the neighbourhood, the man to whom Colonel Waring referred, to testify to these improvements?—Sometimes in the case of an old building he is very useful.

4146. Could the next neighbour, for instance, tell as a rule about the making of drains?—No; the case sometimes arises where a neighbour can prove it.

4147. And it is required by the legal Commissioner that evidence shall be given by some person who saw them a-making?—Who saw them being made.

4148. Otherwise a tenant will be disallowed the improvements?—The tenant would be disallowed the improvements.

4149. At the beginning of 1881 I think there was some difficulty in identifying the farms; you had no maps them?—For the first two or three years we worked without maps; four years.

4150. I believe it was not until August, 1888, really, that the rule requiring the lodgment of maps was made, on the 24th August 1888. Then I see by a rule of the 26th July 1890, this rule was rescinded, because I understand that it became difficult for the tenants to get the ordnance maps, and it became expensive?—Yes.

Mr. *M'Cartan*—continued.

4151. In some cases they might require three or four sheets for one farm?—They might require three or four sheets for quite a small farm.

4152. From that date the Land Commission supplied them, did they not?—They supply the maps now.

4153. And it works more conveniently, does it not?—No doubt.

4154. As to the fair rent, I think the question has been asked several times before, but I do not understand it very well yet, that is, exactly how you arrive at a fair rent. I understand the first thing you find out is the gross rent?—No, I value the farm as I find it, and look into all the improvements.

4155. Perhaps you do not use the term in the south in the way we do in the north, that is what we generally call the gross rent, the value of the farm as you find it?—As I find it.

4156. And fully equipped, I will use that expression, or as you find it?—As I find it, leaving out buildings.

4157. Might I ask on what basis you value the farm as you find it. Have you any regard to what it will produce, or to the cost of labour?—I value it according to my idea of what such land ought to be worth.

4158. But you do not go into the figures as to how much it would produce, and the cost of labour?—That would be an endless inquiry.

4159. I suppose the inquiry would not lead you to believe that the landlord was entitled to such rent out of it?—I think not of late years.

4160. Of late years you seldom find a balance in his favour, do you think you would?—Well, a small balance; perhaps, very small.

4161. Do you believe it would be a very satisfactory way for the landlord if you did?—I do not think it would; I do not think it woul be possible to arrive at a fair rent in that way.

4162. So you just look at the farm, and from your own experience you examine the soil and put an estimate on it?—I examine the soil carefully, and put an estimate on it.

4163. As to town parks, have you had much experience of town parks?—Yes.

4164. When Mr. Bailey was giving his evidence he said that what were called town parks would just be as valuable in the hands of a person not living in the town as it would to the townsman?—Well, it might.

4165. It is proximity to the town that gives it the value, is it not?—It is proximity to the town that gives it the value.

4166. Have you noticed any great change now in what is called town parks, and what were formerly called town parks at the passing of the Act, or towns rather?—Any great change?

4167. Any great change as to the size of the towns?—Well, my ideas have become very much enlarged as to what is a town park owing to decision.

4168. The definition has extended a good deal, has it?—Yes, a much larger piece of land is considered now a town park than what I should have called a town park formerly.

4169. Have you had much experience of mill farms?—We meet them occasionally.

4170. I understood

Mr. M'Cartan—continued.

4170. I understood from Lord Justice Fitz-Gibbon that they were not excepted where the mill was suitable to the holding. Have ever you known a case in your experience of where a mill, a grinding mill or a scutch mill, was required for a particular holding that was not required for the accommodation of the neighbourhood?—I have known farms with a small mill on them, but I do not think that mill was confined simply to the holding. I never found a case of that kind; they were always doing outside work.

4171. So that the exemption from the exemption as to mill holdings would apply to very few cases indeed in Ireland?—I think so.

4172. Now as to deterioration, you gave a reply to Mr. Brodrick, I think, that I do not understand very well. It was this: Where a tenant had made improvements, say, which increased the value to about 10*s.* an acre, and afterwards allowed those improvements (perhaps through no fault of his own) to deteriorate to the original state of the farm, in that case what was your practice?—If the tenant deteriorates his own property, that is a matter entirely for himself. I think it does not affect the landlord; on the other hand, if a tenant deteriorates the landlord's property by wilful neglect, if, for instance, by allowing a watercourse to be diverted and that water does injury to the land, that might injure the landland's interest, and I think it would be my duty not to allow the tenant the benefit for that deterioration; but if it was only a deterioration of his own outlay on the farm, why, it is a matter for his own consideration, I think; it does not affect the value of the farm as regards the landlord.

4173. Mr. Fuller asked you a question as to the costs, and I think you said that it seemed strange that a person who felt aggrieved, and proved that he was aggrieved, had to pay his own costs. Rule 5, of December 1883, says this: "The court shall have power to give or withhold the costs either in the whole or in part of any proceedings under this Act, and to direct the same, or any portion thereof, to be paid by the opposite party, and generally to make such orders with reference to the payment of costs as, having regard to the circumstances of any case, it shall deem meet." Is it not your experience, that they never do give costs to the tenant who applies to have a fair rent fixed, even when he gets a reduction?—No, he does not get costs; each party pay their own costs.

4174. Do you consider that tenants are satisfied with that mode of procedure?—Oh, the tenants grumble, but, as I have said before, they have got accustomed to it.

4175. They have got accustomed to grievances of every kind, I suppose?—I should say that if they were offered the facility of arriving at a fair rent, as suggested by Mr. Bailey, if they came before the Sub-Commission Court for a hearing, I think the costs should follow the decision.

4176. Do you consider that justice would be done to the tenant and landlord alike if, on questions of value and fact, the Court of Sub-Commission was made the final court?—I think as regards value, it ought to be a final court when the court is unanimous.

Mr. *M'Cartan*—continued.

4177. And as regards fact?—Value and fact. Law points might be appealed.

4178. Do not two lay Commissioners go from the Court of Sub-Commission where the evidence has been given, to visit and inspect the farms, and to see and have corroboration of the evidence given in the court?—Yes.

4179. And there is no such practice, so far as the Chief Commission or the Court of Appeal are concerned?—There is no such practice, they send the court valuers before the hearing.

4180. They send the court valuers; whereas you inspect it yourselves?—We inspect it our selves.

Mr. *Sexton.*

4181. We have it in evidence that the total number of rents fixed in the year is 294,000, and that 60,000 claims were struck out, dismissed, and withdrawn; and I find in Thom's Directory that there are 486,000 agricultural holdings in Ireland. Does your experience enable you to assist the Committee so far as to state the principal causes why so large a number of holdings continue to be excluded 13 years after the passing of the Act?—I think abatements given out of court, on some estates, account for a great many cases of keeping out. I also think that arrears keep a great many tenants out. There are all sorts of reasons, but I think perhaps the chief reason that keeps most out would be temporary abatements and arrears.

4182. Have you any reason to think that fear of a withdrawal of rights, such as turbary, mountain grazing, and the right to take sand or sea-weed, might deter the tenant from coming into court?—I am sure, in certain cases, it has deterred them from coming into court.

4183. Does fear of the cost of an appeal, do you think, operate?—The fear of the cost of an appeal from a Sub-Commission Court, that is?

4184. Yes, to the Land Commission Court?—To the head Commissioners?

4185. Yes?—That has, I think, very often prevented tenants appealing, who were dissatisfied with their rents.

4186. We have it in evidence that the rents brought up to the Appeal Court have only been increased 0·2*d.*, that is a halfpenny in the pound; but that halfpenny in the pound of course has cost vast sums of money, and in the case of an increase of rent, I understand the tenant has to pay the costs of the landlord as well as his own?—I am not very well versed in the proceedings of the Court of Appeal, but I understand that that is so.

4187. Take it from me, assuming that your rent is increased, no matter how little, the tenant then bears the costs of the landlord, and his own costs?—I think so.

4188. That would be a crushing burden, would it not?—Yes.

4189. And the fear of it would deter many from coming into court, would it not?—Yes.

4190. You have been in this service from the beginning, have you not?—I have from the first.

4191. And although you are a lay Com-

Mr. *Sexton*—continued.

missioner, your vote in any court would be equal to that of any other Commissioner?—Yes.

4192. I suppose you have endeavoured to keep yourself aware of the effect of the judicial decisions under the Act?—Yes.

4193. As well as you could?—As well as we could; the legal Commissioner keeps us right

4194. We all feel some difficulty about it. Do you think now that you would be able, with any certainty, to determine, in a particular case, whether or not a holding comes within the Acts, or whether it is a non-agricultural holding?—Oh, I think so. There would be a great deal of fact in that.

4195. Yes, but as to the application of the law, if there was any small part of it held to be non-agricultural—any minute portion—do you think you would feel some difficulty in determining it?—We, as a rule, have no difficulty in forming our opinion upon such matters, and we would then give the legal Commissioner the benefit of our opinions and discuss the matter.

4196. My point is rather this: Suppose a case came up where it was contended that a holding was let to be used mainly for the purpose of pasture land, or that it was a demesne, a piece of demesne land, or a town park, bordering the place or near where a town was, whether it was non-agricultural or residential, do you feel that it would be necessary for you to resort to the legal Sub-Commissioner and take his opinion?—As far as the law enters in, yes; but in all other respects, the lay Commissioner is the best judge.

4197. Upon the question whether or not the holding was within the Acts, you would resort to the legal Commissioner, would you not?—Certainly upon a question of law.

4198. What has been the usual run of your experience in regard to unanimity between the agricultural Sub-Commissioners upon questions of value and between the three on questions of rent?—As a rule there is unanimity; of course there are exceptions.

4199. Have you often had occasion to dissent? I have occasionally.

4200. First from your colleague on inspection?—Yes, I have felt it my duty on certain occasions to dissent.

4201. What was the usual fact in that case; were you in favour of a higher or a lower rent?—I think for the first few years after my appointment, whenever I had to dissent, as a rule it was on behalf of the landlord. I think as a matter of fact of late years, when I have dissented, it has happened to be, on the side of the tenant.

4202. When you have dissented on the side of the tenant, what has been the usual result when the three Sub-Commissioners came to vote?—The result was sometimes unsatisfactory in my opinion.

4203. That is, your opinion was overborne?—That is so in cases.

4204. Was an appeal taken in these cases?—In some cases there would be an appeal, but in other cases there would not be an appeal. In such cases there would be no notification sent to the parties of any dissent in the Court.

4205. Has the appeal usually affirmed the

Mr. *Sexton*—continued.

rent as fixed by the Court below, or reduced it?—Well, I have not followed the cases as a rule. In certain cases that I have in my mind now in County Cork, I am under the impression that, when these cases came before the Court of Appeal, the rents were lowered.

4206. Has the Land Commission laid down any principle, or fixed any rule, or issued any instructions to you and your colleagues, in regard to the fixing of fair rent, or dealing with improvements?—No, none.

4207. Each of you is left absolutely to his own discretion?—Absolutely to his own discretion.

4208. And to his own understanding of the law?—Well, he is left to his own discretion. Of course the legal Assistant Commissioner, I may say, keeps us straight as regards law.

4209. That is if he happens to become aware that you are wrong about the law in any particular point; if he does not happen to become aware of it, of course he cannot give you direction?—That is so.

4210. Are you aware that, in the hearing of Adams *v.* Dunseath in the Land Commission Court Mr. Justice O'Hagan and Mr. Justice Litton were of opinion that the whole of the letting value resulting from improvements belonged to the tenants; that the whole of the letting value added to a farm by improvements belonged to the tenants, and must be allotted to them?—I would not like to be examined on Adams *v.* Dunseath; it is so long ago.

4211. This is the Land Commission Court in Adams *v.* Dunseath I am speaking of. Have you given much attention to the final court in Adams *v.* Dunseath?—I repeat that I would not like to be examined much as regards Adams *v.* Dunseath; I have not got it clearly in my head.

4212. At any rate the state of the case is that, as the Land Commission has not laid down any principles, rules, or instructions, you act upon your own resources?—Except as regards law.

4213. And upon the law, or any point of law, you take it from the legal Sub-Commissioner?—We are bound to take it from the legal Sub-Commissioner.

4214. Have you any reason to doubt that the law, as laid down by Mr. Bailey, is correct?—No, I have no doubt about it; I am sure it is correctly laid down by Mr. Bailey.

4215. If then you were hearing a case, with Mr. Bailey in the chair, Mr. Bailey, confirmed by Mr. Doyle, and other legal Sub-Commissioners, and he told you that after allowing to the tenant as much as would pay him the cost of making an improvement, you were bound by law to give the remainder of the letting value to the landlord, would you act upon that direction from him?—In that particular case, if he so laid it down, I would be bound to.

4216. In that particular case?—In that particular case.

4217. If he told you that it was a general rule, of course you would apply it generally, if he told you it was a rule of law?—Certainly, if he did; if he led me to see that I was bound by it, I would.

4218. The evidence before us is, that you value a holding as it stands?—Well, as we see it of course, as it stands.

4219. That is to say, you fix the value of it as the

Mr. *Sexton*—continued.

the value of it is, at the time, to the tenant?—Yes, of course in doing so, allowing the tenant his interest in the farm.

4220. Certainly, I suppose you know that the statute lays down, that an improvement is an executed work, not a work to be yet executed?—Yes.

4221. It is an executed work?—An executed work.

4222. Your evidence about improvability, (interesting evidence), has, I think, somewhat perplexed the Committee, and I think we would like to understand whether, with regard to this theory, of anticipating the improvability of land, in the fair rent whether you apply it generally, or were you speaking of some particular class of land, or some particular reclamation?—Improvability in my opinion, comes in, in every case. It is the natural quality of the soil, plus any natural facilities there may be for improving that land. "Improvability" may be a wrong word for me to use. My meaning of it is, simply the quality of the land, and any other circumstances which might possibly make that land to be more valuable, such as situation, and natural facilities for improving that land. Such a bit of land having those advantages, in my opinion, would be worth more than land that had not those advantages.

4223. Are you speaking of qualities of the land that would be drawn out by ordinary culture, or are you thinking of qualities of the land that would require special expenditure in the way of improving by the tenant, to draw them out and make them valuable?—I am thinking of the land as I see it, and what I think that land may be worth to a tenant, for the purpose of reclamation, or any other purpose.

4224. Yes, in case he did reclaim it?—If he was going to reclaim it.

4225. Does it not occur to you, that it might be more convenient, and might be more equitable to the tenant, if you fixed the value of the land as it stood, for the use to which it might then be put, leaving any further fair rent to be assessed upon it, after the improvement had been made?—Am I not doing that in the case that I took of the two acres which has been enclosed, a piece of rough mountain land that is enclosed for the purpose of reclamation? If I examine the soil, and see that the land is capable, without great expenditure, of being improved, if there are natural facilities for reclaiming that land, I think that that bit of land is worth more to the tenant than it would be if it was a portion of a mountain tract that was going to be kept simply for pasture.

4226. It is worth more if you carried out the improvement, but only in that event?—There is some misunderstanding as regards what I have said.

4227. We must have it clear if we can. I understand you to say, the mountain run, as it stands, is worth a shilling an acre?—Yes, of which this two acres is a portion. Take the case now that this two acres adjoins the tenant's farm, and that he wishes to reclaim it; I assume that I found that land when I went on it, to be by far the best portion of that run,

Mr. *Sexton*—continued.

and that I found it fenced in, and that the tenant told me he was going to reclaim it; in my opinion, the fair rent the landlord is entitled to under these circumstances, is exactly the same in its wild state (whatever its worth as to the two acres that are attached to the farm), as if the improvement had taken place. If the improvement had taken place I would come back to its value in the wild state, and if I find it in the wild state I value it in its wild state.

4228. May I take it that we are talking really only of land in a wild state. Are we talking only of land in a wild state?—I would take improvability always into account, in all land, all land except land let solely for pasture.

4229. Do you fix rent upon a tenant in the expectation that he will make improvements? Do you fix as much rent in the case of improvability, as you would fix upon that land, if you came afterwards and found the improvement made?—I think the rent ought to be the same.

4230. So that if you to-morrow went to value a farm, and found upon it land possessing as I suppose all land does in some degree the quality of improvability you would fix upon that farm at the beginning of the statutory term the same rent as if all the improvements of which you thought that land fairly susceptible, had been already made?—Let me put it in this way: If the improvements had been made, I would value it in its wild state.

4231. And then, in case the improvements were not made, the tenant would go on for 15 years paying the same rent as if he had made the improvements at the beginning?—And it would be worth it to him, if I valued it properly.

4232. Taking wild land—if the wild land is worth a shilling an acre as it stands, and if improvement would make it worth 10*s.* an acre, and the fair rent would be 3*s.* an acre, surely if you charge that 3*s.* an acre, and the improvement which would make it worth 10*s.* an acre is not made at all, then the tenant suffers if the improvement is not made?—I do not think so; not according to what I do, because the land must be worth 3*s.* an acre. It must be worth 3*s.* an acre, before I put the 3*s.* on, then if the tenant makes it worth a 1*l.* an acre, it is his own outlay that makes it.

4233. Does not the worth of the 3*s.* depend upon the improvement of the land being made?—No, not in my opinion.

4234. Is it worth 3*s.* to the tenant at the time without any improvement?—Certainly.

4235. How?—In my opinion it ought to be worth that.

4236. I understood you to say that the mountain run was worth a shilling an acre?—It was formerly a portion of a run, and as a run, it might be worth only a shilling an acre, that may not be the true value of the two acres attached to the tenant's farm. With natural facilities we will say for reclaiming, it may be worth 3*s.* or 4*s.* in my opinion, even if the tenant does not reclaim it.

4237. Although the law says the improvement is to be an executed work, not one anticipated to be executed, at any rate the effect of your

Mr. *Sexton*—continued.

doctrine, so far as you carry it, is that you charge the same rent upon the tenant, in anticipation of the improvement, as you would if the improvement had been made; you would not charge any more than the 3*s.* upon the mountain run if the improvement had been made?—No.

4238. You would not?—No.

4239. Now you held generally, I understood, that the increased letting value due to improvements should belong to the tenant?—Yes; that is my opinion that they ought to belong to the tenant.

4240. We have had it in evidence here from one of the Lords Justices that the law is that you have first to make the tenant a fair allowance for the cost of the improvement, and that afterwards the rest of the letting value is to be distributed or dealt with, having regard to the interest of the landlord and of the tenant respectively?—Yes.

4241. Of course, if the legal Sub-Commissioner told you that that was the law, you would be obliged, would you not, to act upon it?—I would in such a case; there is no doubt about it.

4242. Would that direction, if given to you, involve a departure from your present practice?—No, I do not think it would as regards reclamation or thorough drainage; and it is the practice I have followed in the case of minor improvements.

4243. Now will you describe your practice in the case of minor improvements; take a case, and tell us what you do with it?—I make my estimate of the value of those improvements, and then I deduct 5 per cent. on that, and allow that to the tenant.

4244. Do you consider how long the improvement will last?—Yes, I do.

4245. How long?—Well, it depends entirely upon the nature of the improvement. I consider the cost of the improvement and all the circumstances connected with it.

4246. Instance a period during which one of these improvements would last; take any improvement you like?—Take drainage, well done.

4247. Minor drainage?—Minor drainage; I think it lasts a very long time.

4248. How long?—Forty or 50 years; there is no doubt about it, if it is properly maintained.

4249. Do not you see that if you give the tenant 5 per cent. for 40 years you give him double his outlay?—It is an improvement; I think, no matter how long it lasts, he is entitled to that improvement.

4250. At any rate, your improvement is measured in that case with the view of giving him back what he has laid out?—Yes, in the case of minor improvements.

4251. In some cases, no doubt, the improvement adds nothing to the letting value of the farm?—I think so.

4252. In that case, the law does not regard it as an improvement at all, does it?—Certainly not; no.

4253. In other cases it adds less than it costs; what do you do then?—If it adds less than it costs?

4254. Yes, if it adds less than it costs?—Are you talking now of reclamation?

4255. Any improvement you please?—Any improvement?

Mr. *Sexton*—continued.

4256. Yes, if it costs more than it adds to the letting value?—That is a loss to the tenant.

4257. What do you do with the increase of the letting value; in that case do you allow it to the tenant? Suppose an improvement costs 100*l.*, and added 2*l.* a year, would you say that that was a case where it added less than it cost?—Yes.

4258. What do you do with the 2*l.*?—Leave that to the tenant.

4259. And in the same case where the result was about equal to the cost you would give that to the tenant, I mean where the result was about equal, suppose it to be 3*l.*?—Yes.

4260. Suppose the 100*l.* to produce 10*l.* a year?—I would still leave it to the tenant.

4261. That is your method of valuation?—Yes.

4262. But you know the law has been laid down that after you make him an allowance which will pay back the cost of the improvement, the rest is to be (some say) given to the landlord. We heard from Mr. Bailey that it should be given to the landlord; we heard from Lord Justice FitzGibbon that, at the discretion of the Land Commission, it should be distributed between the tenant and the landlord according to their interests?—I may tell you my practice in the case of those minor improvements is to make an estimate of the outlay of the tenant and allow a percentage.

4263. But in the major improvements?—In the major improvements I told you that I would value the land in its wild state.

4264. Suppose there was no wildness about it; take land that is not wild, take settled, cultivated land that is not wild?—Improved in what respect?

4265. Improved in the respect that the letting value was increased far more than the improvements cost?—Improved by what form of improvement?

4266. Improved by excellent drainage or improved by first-rate drainage?—It must have been in a wild state if it required thorough drainage. I consider its value in its wild state is the value the landlord is entitled to.

4267. Can you not have upon good land improvements which will add more to the letting value than they have cost?—You may make improvements such as you speak of, I think.

4268. In Ireland, if improvements are not made by the tenants, they are not made by the landlord, are they?—Well, we very seldom find them made by the landlord.

4269. So that they must be made by the tenant or they would not be made at all?—Of course there are exceptions to that. On certain estates in Ireland you find improvements have been made by the landlords.

4270. I am speaking of the general rule?—As a general rule they are not made by the landlords, they are made by the tenants; all improvements.

4271. That would increase your conviction that the increased letting value ought to be fairly given to the tenant?—Yes, certainly.

4272. Does your practice enable you to say why it is, or whether there is any reason apart from the letter of the law, why the Ulster tenant should stand in a condition so advantageous

as

Mr. *Sexton*—continued.

as compared with other tenants?—I see no reason.

4273. All the improvements are held to be his; he is not subject to any of those limits of time or enjoyment, and so forth?—No, they have some benefits which the tenant outside Ulster is not supposed to have had.

4274. Then the presumption is always in his favour that he made the improvements?—More so than outside Ulster.

4275. When he wants to sell, he can go into the market and sell for the best price?—Any tenant can sell for the best price outside Ulster, if he gets leave to sell, and the landlord does not exercise his right of pre-emption; of course that tenant has the same advantages as the Ulster tenant, he sells in the open market.

4276. It makes a good deal of difference, selling in the open market and selling under right of pre-emption, does it not?—I think a very great difference.

4277. Is there any difference in the relative condition of the two tenants why that difference should be made?—I do not see any; he naturally expects the market price for what he is selling, and he does not get that when the landlord exercises his right of pre-emption.

4278. The Act says very solemnly that you are to fix the specified value; but we have heard from witnesses here, Mr. Doyle, for example, that it is very hard to say on what principle any value is put, and you have said that you "guess" at it somehow?—That is as to fixing the value of a tenancy; no evidence is given as to fixing the value of a tenancy.

4279. That is preliminary to the purchase by the landlord?—No; the specified value is fixed on the application of the landlord on the hearing for a fair rent.

4280. But it is the value so fixed that the landlord has to give if the tenant is going out?—Yes.

4281. That is the basis of pre-emption, is it not?—Yes; but it is much more difficult for the Sub-Commissioners to arrive at the "true value," in my opinion, for this reason: evidence is given, as a rule, when the pre-emption case comes before us, but when fixing the value of the tenancy we get no evidence at all.

4282. That is, when the tenant is going out?—Yes.

4283. When you fix a specified value, you have the same evidence that you have in fixing the fair rent?—That is the only evidence we have.

4284. It is at the time of fixing the fair rent that you fix the specified value, is it not so?—Yes.

4285. Why should it be any more difficult to tell what a reasonable and solvent person will give for the tenancy of a holding than it is to do what you do in every fair rent case, that is, to tell what he will give from year to year?—In fixing the value of a tenancy, we do not get the evidence; I think I may say I have hardly ever known a case where any evidence was given.

4286. But you have the evidence upon which

Mr. *Sexton*—continued.

the fair rent is fixed, have you not?—We have that.

4287. You know what the interest of the tenant is in the holding?—Yes, we can make an estimate.

4288. How do you define the interest of the tenant in a present tenancy to which the Act applies; he has first the right to be compensated on quitting the holding, has he not?—That would be under the 1870 Act.

4289. He retains that right?—He retains that right and compensation for improvements.

4290. Compensation for improvements and the right to sell to the landlord?—Yes.

4291. And he has the right of perpetual occupation of that holding subject to the fair rent you fix and to the statutory conditions?—Yes.

4292. These are valuable elements, are they not?—They are undoubtedly.

4293. And if they were sold in the market, then nobody could question that he had received the value of his interest?—I think not; I think they should be sold in the open market except in certain cases; I think in some cases the landlord should have the right of pre-emption. Take a farm that was formerly let out of a demesne, or which formed a portion of a demesne; in exceptional circumstances I think the landlord should have the right, but not a general right as at present.

4294. But in the ordinary case you see no reason why the non-custom tenant in Ulster, the tenant generally elsewhere in Ireland, should be deprived of the right which the Ulster custom tenant exercises in the language of the Act to sell his holding for the best price he can get; do you agree to that?—Certainly.

4295. Now I want to put to you just a few questions about the fixing of a fair rent. In fixing a fair rent, you do not fix the rent that a stranger would fairly pay if he were coming in?—No, we fix a very different rent to what one would if the farm was in the landlord's hands and he was letting it to a man who had no interest in it.

4296. You call that competition rent?—I call that competition rent.

4297. Although you do not keep it in mind in that particular case, of course you have in your mind some general principle between competition rent and a fair rent?—Yes.

4298. Do I define it correctly when I say that in the case of a present tenancy to which the Act applies, the difference between a competition rent and a fair rent is the value of the right of perpetual occupation and the value of the improvements of the tenant, the annual value. The difference between the rent that you can charge a stranger coming in, a competition rent, and the rent that you do charge the man actually there is the annual value of, first, his right to stay there perpetually at the rent you fix; and, secondly, the right to sell his improvements, exemption in regard to his improvements; that is the difference, is it not?—That is the difference.

4299. Now you know from the evidence here that the reduction of all the old rents you have dealt with has been about 20 per cent., the average?—I think that is so.

Mr. *Sexton*—continued.

4300. Those old rents were fixed, were they not, usually, before 1870?—As a rule before, and long before.

4301. That is to say, they were fixed at the time when the tenant might be evicted at any time?—When the tenant might be evicted.

4302. And was liable to pay any rent that was asked of him?—Certainly.

4303. I take it that 20 per cent. appears to be, in your judgment, the average difference between the competition rent and the fair rent?—I think it would be more than that, there would be between 30 and 75 per cent. difference between the fair rent and the competition rent. I have met cases where, I think, perhaps 75 per cent. was the difference, the tenant's interest represented 75 per cent. and the landlord's interest represented 25 per cent.; I meet all sorts of cases.

4304. Then if the average difference between the old rents and the judicial rents is only 20 per cent., it would appear that there has been hardly full allowance made for the difference between the competition rent and the fair rent, according to your definition?—I do not think there has been allowance sufficient made, certainly up to 1885; perhaps sufficient allowance may have been made since. I do not know what the returns show, but I think, as a rule, there was a change in the opinions of most Assistant Commissioners about the year 1885 or 1886; rents have been fixed lower since.

4305. You think the new legal right of the tenant to remain in his holding for ever, subject to the fair rent and the right to relief in respect to improvements, ought to make a difference of between 30 and 40 per cent. between the competition rent and fair rent?—I think so, perhaps more than that.

4306. Although you do not act rigidly upon any such element as prices, or rate of labour, and so forth, still is it not the case that in fixing fair rents you do it by the acre. I believe you value by classes, do you not?—Yes, in classes.

4307. The all-important figure, I judge, is the figure you apply to the acre?—That is the important figure.

4308. That figure contains a multitude of factors; we cannot attempt to analyse it, because it contains, as I understand, not only the price, the gross cost, but probably also the cost of production and any other elements in the case, such as turbary, water supply, situation, and so on?—Not necessarily; those would be after considerations.

4309. But the exact figure is an amalgam of all those considerations in your mind?—Yes.

4310. It is impossible for us to analyse it?—It is difficult; it is just the opinion of a practical man as to what such-and-such a bit of land is worth.

4311. But that opinion is founded after all, when you come to the bottom of it, upon what you think a reasonable man, who intends to pay his rent and live by his farm, would pay for it from year to year?—I think so.

4312. Do you base your judgment upon what will remain to the tenant out of the produce after he has paid the rent and the cost of production?—Our estimate should be based upon all those facts; our estimate should not infringe on the tenant's interest; it should be a fair "live-and-let-live" estimate.

Mr. *Sexton*—continued.

4313. In fixing a fair rent, therefore, you have in your mind some definite idea of the surplus left upon the farm, after the cost of production is paid, of the total value of the produce of that farm, you must have?—Yes; as a matter of fact in each farm we could not think of making the calculation.

4314. I understand that perfectly, but I mean your valuation is founded upon some general principle in that regard?—Yes; what one considers from one's practical experience such an acre of land ought to be worth.

4315. Now, in your practice, what is the general or the actual proportion, or relation, between the fair rent and the produce of the farm?—That varies very much.

4316. Give me some idea?—The rent might possibly be, in certain cases, nearly half; in other cases a fourth of the gross produce.

4317. And both of them might be fair rents?—They might; there is a difference of at least that.

4318. How do you reconcile leaving the tenant in one case three-fourths of the produce, and in the other only half of it?—It is a different class of farm and a different method of using the land; in one case there may be a large labour bill, in another case perhaps no labour bill at all, simply a herd to look after a piece of grass land, the labour bill is an important element.

4319. So far as the interest of the landlord, and the interest of the tenant, and the direction of the Act that you are to have regard to them, governs a fair rent, would it be correct to say that in the ordinary case of a present tenancy, to which the Act applies, the interest of the landlord consists in the right to receive the rent which you fix, and the interest of the tenant to occupy the farm perpetually at that rent?—That is my idea.

4320. That represents a tolerably fair equality of interest in many cases?—Yes.

4321. And suppose now the landlord and the tenant of an ordinary present tenancy, especially where there are improvements by a tenant, were to go into the market to-morrow at the same time, and each of them to sell his interest in the holding, would it not be a common case that the tenant would get as much as the landlord?—Yes, and perhaps more.

4322. Much more, perhaps?—Much more in many cases.

4323. Then he is, in the most substantial, if not the plenary sense of the term, a part owner?—Certainly.

4324. And in all considerations of fair rent, and in all considerations of the apportionment of the value of improvements, you would treat the tenant's interest by that test; that he is a part owner by law?—Certainly.

4325. And, in that respect, entirely different from a tenant in any other country, or from a tenant in Ireland who is not a present tenant?—Certainly, quite different.

4326. Does your practice lead you to say that all these seven restrictions upon the tenant in regard

Mr. *Sexton*—continued.

regard to exemption for improvements, and all these restrictions of presumption, and so forth, ought to be maintained, or would it not be fairer for the tenant to go into court, as he makes the improvements in Ireland, having the general presumption on his side that the improvements have been made by him?—I think that the presumption should be that all improvements are made by the occupier of the farm, leaving it to the landlord to prove that he either acquired the improvements or made them.

4327. And that, as I judge, for the simple reason that that presumption, if its exists, would accord with the facts as you know them?—Yes; it would give each man his own property, as a rule.

4328. And the presumption, as it exists, is frequently an element in the case, and causes loss to the tenant of the property which he has made?—I have no doubt about it.

4329. I do not think I shall trouble you further than to ask you whether you consider the system of appeal on value, which has resulted, I should tell you, in a net increase of a halfpenny in the pound of the rents you have fixed, is worth the cost of it?—I do not think it is; but I think if it was done away with that Mr. Bailey's suggestion should be carried out, namely, give the parties the advantage of a court valuer's estimate in the first instance, so that they would have the opportunity of staying out of court. First of all, I think that should be adopted; then let them come before the Assistant Commissioners. I would give no appeal from the Assistant Commissioners' court, certainly on value.

4330. The present system appears to be infirm in two respects; first, that the appeal valuers, when they come upon the holding, apply no fresh judgment to the question of what improvements belong to the tenant and what to the landlord?—No.

4331. They must take all that as you have found it below?—We have the advantage over them; we have heard the evidence in court, and we have inspected the holding. They go there and value the farm, having only the report.

4332. But they have to take your report?—They have to take our report.

4333. They cannot investigate freshly for themselves anything in your report as to the apportionment?—I cannot answer with regard to their practice; I should think if they found anything wrong in the report it would be their duty to draw the attention of the Commissioners to it; I do not know what their practice is, further than that, but I am sure in such a case as that they would be at liberty and it would be their duty to bring the matter forward.

4334. Then the Appeal Commissioners, of course, do not inspect the holdings, any of them?—No, they do not.

4335. They are three gentlemen of whom two are lawyers, who finally determine the value of a holding which they have not inspected, and overrule the judgment of three gentlemen, two of whom are agriculturists?—That is so.

4336. Do you think that a very healthy system?—No, I do not.

Mr. *Sexton*—continued.

4337. One of the Commissioners, Mr. Commissioner Fitzgerald, I believe, always sits in these appeals?—I do not know whether he always sits; he very often sits.

4338. He told us he always sits; and he is, I think, the gentleman who has the power of removing from any one district to another any Sub-Commissioner whose judgment comes before him?—I think that is his department.

4339. Now I just want to ask you this: At present the parties are only told the fair rent?—They are told the fair rent only.

4340. With a view for them to satisfy themselves whether your judgment is fair or whether they ought to appeal, do not you think they ought to be told the full letting value of the holding, first, and then the value you have put on the buildings if they are the landlord's?—That is told them, in part.

4341. Would you tell them the full letting value of the holding?—Well, I hope we should not have to do that; I do not know whether it would lead to any good; it would be a contentious point to give Assistant Commissioners; and I cannot see that it would be any practical use to the parties except to encourage appeals.

4342. Have you got to determine it; you must get a figure from which to deduct the improvements before you can get the fair rent?—You wish to see stated on the schedule of improvements the amount allowed for improvements?

4343. No; as I understand, you deduct from the fair letting value of the holding the amount allowed for improvements?—Yes.

4344. The residue is the fair rent?—The residue is the fair rent; that is so.

4345. The fair letting value being calculated, of course, upon the basis that the present tenant has an occupation right?—Yes, of course.

4346. Have you any objection to state the three elements; first, the fair letting value?—I hope it will not be the case that we have to do it; it seems to me that it will lead to appeals; it seems to me that it does not matter to the tenant how the rent is arrived at provided the result is satisfactory to him. It may be arrived at by a high estimate of the land, and a high estimate of improvements; or it may be arrived at perhaps by a low estimate of the land, and a low estimate of the improvements. The tenant in the case where he sees that only 30*s.* has been allowed for his improvements (although he is fairly satisfied with the result) may think that he ought to have been allowed 5*l.* for his improvements, and will appeal.

4347. You think the less he knows about it the less he is likely to appeal?—I do not think really that it would be much use to him.

4348. You would rather just tell him the fair rent?—I would much rather just tell him the fair rent.

4349. And not tell him how much you take off the fair letting value for his improvements; you would rather not trouble him with any detail upon it?—I think it is a contentious matter to give the Commissioners to decide; you

Mr. *Sexton*—continued.

have to agree with your colleague as to the value of every little improvement.

4350. You think the tenant would be more likely to appeal if he knew it?—I think it would lead to appeals even in cases where tenants were perfectly satisfied with the rent.

Mr. *Leese.*

4351. I understood you to say, a moment or two ago, that sometimes tenants were deterred, by fear of costs being given against them, from appealing?—I think so.

4352. I want to ask you whether you know, from your own experience, assuming a judicial rent to be fixed and the tenant to appeal, if the judicial rent is affirmed, what is the custom as to costs: judicial rent fixed, tenant appealing, judicial rent affirmed; what is then the rule as to costs?—I really am not very cognisant with that; I cannot answer that.

4353. According to the rules I have before me, in Cherry, page 585, if a judicial rent is fixed and the tenant appeals, and if the judicial rent is affirmed, the landlord is entitled to costs?—Yes, the whole costs.

4354. In the second place, if the judicial rent be increased, the landlord is entitled to costs as a matter of course; if the judicial rent be reduced each party abides his own costs. That is a point I want to get on the Notes?—I do not know it from my own knowledge.

Mr. *Dillon.*

4355. Have you worked in the province of Connaught?—Yes.

4356. Have you come across many cases of small reclamation tenancies in that part of Ireland?—Yes, very often.

4357. Is it not a fact that in the province of Connaught, in the case of many of those small holdings, the improvements, the reclamations, carried out would not be profitable if carried out on commercial principles by hired labour?—That is very often so.

4358. That is often the case?—No doubt about it.

4359. That is to say, it would not have paid the landlord to carry out such works by hired labour?—No.

4360. You said that in proceeding to fix a judicial rent, a fair rent, in reclamation cases you fixed the value of the land in its wild state, *plus* something for improvability?—Yes.

4361. What do you do in a case where you find the tenant has spent, on effecting the improvements, such an amount that a fair interest would be more than the fair present rent of his holding?—There is no improvability in that case.

4362. You would then judge that there was no improvability?—No improvability.

4363. Would you then give the holding to the tenant at the value in its wild state?—I should.

4364. Now is it not a fact that in the case of many of these holdings, I might ask you is it not a fact that in the case of the majority of these small holdings in Connaught, the labour spent by the tenant, if estimated at the ordinary wage of the district would represent a sum which, with

Mr. *Dillon*—continued.

the interest upon it, would be more than the present rent of his holding?—I think so; you could very often find cases of that kind, cases of poor land.

4365. What do you do in the case of a holding of that kind in fixing a fair rent?—In my opinion the rent the landlord is entitled to in that case is what the value of the land in its unreclaimed state.

4366. Would you estimate the value of ordinary wet bog in Connaught in its unreclaimed state at what you offer if you were a farmer?—It is hard to say that until I see the bog, and there are many circumstances that affect it.

4367. You are a farmer?—Yes.

4368. What would you offer for such bog?—It is very difficult for me to say until I saw it; there are bogs and bogs.

4369. Take ordinary bog, what would you offer for it as a yearly tenant?—I would have to see the bog and the locality.

4370. Would you like to take it?—I might not like to take it at all.

4371. Have you ever worked under the De Freyne and Dillon estates?—On the Dillon estate I think I have.

4372. Have you seen the bogs there?—I cannot recollect working on the De Freyne estates; I have worked all round those estates.

4373. Are you prepared to say what you would offer for one of these as agricultural land?—I cannot recollect the De Freyne or Dillon estates.

4374. Can you give us any idea in your practice what is the nature of the rent of those holdings? What is the nature of the rent? Have you ever come across one of these bog holdings let at 10*s.* an acre?—Do you mean as a judicial rent?

4375. No?—The old rent?

4376. The old rent, at 10*s.* an acre?—Yes, I have.

4377. Have you come across them even higher than 10*s.* an acre?—In these bog holdings?

4378. Yes?—I think I have. May I ask whether you are talking of the Statute or the Irish acre?

4379. The Irish acre?—Far higher than that I have found.

4380. Have you formed, in your own mind, any general idea of what kind of relation such a rent bears to land in its original wild state; a term you have very frequently used to the Committee?—The present value of the farm, do you mean?

4381. Take 10*s.* an acre, which you say that you have found on a reclaimed bog holding in the province of Connaught; 10*s.* an acre we will take as not an uncommon rental; have you ever formed any kind of idea of the relation of that rent to the value of the bog in its original wild condition, such as you yourself would offer for it as a practical farmer?—Yes, I have found cases where the land has been all reclaimed from mountain.

4382. But I am talking of bog, which is a more common form of reclamation?—Well, bog.

4383. The question I put to you is this: Have you ever formed an estimate of the relationship of

Mr. *Dillon*—continued.

of the value which the land is now paying to the value of that land in its wild state to a practical farmer?—I have never particularly gone into that calculation, what it is now paying. It matters nothing to me what it is now paying; what I have to deal with is what the future rent is to be.

4384. Allow me to draw your attention to this fact. You have stated that in fixing a fair rent you first of all estimate the original value of the land in its wild condition?—Yes.

4385. I presume you mean the value to a man who wanted to live on it; a practical farmer?—Yes.

4386. You added to that something for improvability. Is there, in your judgment, any improvability in land which cannot be improved on commercial principles, without spending a great deal more than you can get a fair rent for?—No, I do not see any improvability in such land as that.

4387. Therefore what I am coming to is this; you have stated that you are bound, in dealing with these bog holdings, to fix the rent on the bog as it stood before the tenant touched it?—Yes; on its value in its unreclaimed state.

4388. According to your statement there is no improvability?—Yes, you have taken a case where there is no improvability.

4389. You told us just now that, in many instances, you found these bog holdings paying 10*s.* an acre, and in many instances more than 10*s.* an acre?—I think so. I have often found it.

4390. Do you think the value of the bog, as it originally stood, compares to any appreciable extent with 10*s.* an acre?—Certainly not.

4391. Then what I want to know is this: It seems to me that in the process of fixing a fair rent upon these holdings, you must have formed, in your own mind, an estimate of what the value of the original land would be to you (I suppose that is the way you look at it) as a practical farmer?—Yes.

4392. What would you give, taking a scope of 100 acres of Lord Dillon's or Lord de Freyné's bogs not yet reclaimed, as a practical farmer?—I really could not answer such a question.

4393. Would you give 10*s.* an acre?—I should be very sorry to give 10*s.* an acre for any such bog. I might give something for a small portion, if it was convenient to me, or convenient to my farm; but as to saying what I would give for a large portion I am afraid that I cannot say without seeing the bog and knowing more about it.

4394. You have stated your view. The Committee make take this as your view; that in dealing with these bog holdings a fair rent ought to be fixed on the value of the bog as it came from nature, or in a state of nature?—Taking all the circumstances into account.

4395. What circumstances?—There may be important circumstances.

4396. There is no improvability?—You have taken a case where there was no improvability; but that is an extreme case.

4397. I took the case in your evidence, in which you said there were a vast number of cases which came under your own experience, in which

Mr. *Dillon*—continued.

the tenant in improving it would expend in labour a sum such, that with the interest on it, would exceed the present rent?—Yes.

4398. There is no improvability there?—There is no improvability there.

4399. Therefore, according to your evidence and way of looking at the law, these tenants ought to get their holdings?—At a reduced rent, and at a very reduced rent.

4400. At a rent such as the land in its natural condition was worth. Now do you think the tenants of Mayo hold their lands on these terms at present, present tenancies?—Present tenancies? I think in a very great many cases they do not.

4401. There is only one other matter I would ask you a few questions upon, and that is the question of prices. You stated that when trying to fix the fair value of the land you take into consideration in a rough general way the average of prices for seven years past, is not that so?—Yes, that is so.

4402. Have you ever formed (you must have formed I fancy in your own mind, both as a practical farmer and a Land Commissioner) some estimate of what effect an all-round fall of 10 per cent. or 20 per cent. in prices would have upon the margin of profit in a farm, have you ever formed an estimate of that?—As applying to certain years?

4403. Yes. Supposing you are a farmer, and that all the produce you had to sell (take an average farm, partly tillage, and with a medium labour bill) fell by an average of 20 per cent., have you formed any estimate with respect to the effect of that on the margin of profit?—Certainly in a general way.

4404. The cost of production remaining the same?—Yes.

4405. Would the effect of a fall of 20 per cent. in the value of all the produce be more than 20 per cent. in the margin of profit if the cost of production is all the same?—I do not quite understand your question.

4406. What I mean is this; I will put it in a different way: supposing that you have a farm and that your gross production from the farm is 300*l.*, it costs 150*l.* to produce that, what would be the effect of the fall of 20 per cent. in the price of everything you had to sell?—It would be very serious.

4407. Would it not affect the net produce or the profit of the farm by more than 20 per cent.?—Yes; but the ups and downs of any one year I do not think should influence me when I am fixing rents.

4408. No, I take your own answer that you took the rough average of seven years?—About seven years. Up to 1885 I fixed rents on a certain basis; after 1885 I fixed rents on a lower basis.

4409. Supposing that you found that in a previous seven years there had been a fall roughly speaking of 20 per cent. on the staple articles of produce on Irish farms as compared with the standard on which you had been previously working, what effect would you give to that in your valuation?—I try to give a fair effect to it.

4410. Do you form any opinion for yourself,

Mr. *Dillon*—continued.

or not, as to the effect, to give what you call a fair rent?—I would have all these facts in my head, or before me.

4411. Surely this is a question of figures?—Yes.

4412. You must have some rule-of-thumb, at all events, by which to go, in bringing in prices?—Well, I do not make any calculation of that kind.

4413. You do not make any calculation of that kind?—Up to 1886, as I say, I had a certain idea of value, and after that I formed a different estimate.

4414. You formed a different value, but based on no calculation of figures?—On no calculation of figures, except from my own experience.

4415. Your experience as a farmer?—My experience as a farmer.

4416. You stated that it was on the average of prices during seven years?—Roughly speaking, about that; it may have been more than 10 years.

4417. Does it not occur to you that if you consider, in fixing the rents, an average of the prices of seven years the statutory term ought to be seven years?—Well, I think the term ought to be seven years; I think 15 years is too long. I think it would be fairer to all parties if it were seven years.

4418. In considering the price you have been influenced by considering the 15 years too long. You have looked at seven and not at 15?—I have looked at 15; I only say that I think seven would be a better term than 15 years.

4419. You have stated in your evidence, and, given as an instance, that the seven years is a period you looked at first?—I think it was seven or 10 years; 10 or seven years.

Mr. *T. W. Russell.*

4420. We have it from Mr. Commissioner FitzGerald that the process of fixing rents between the years 1881 and 1886 was "loose and rapid," do you agree with that?—I do; I think that is the case.

4421. Would you say that rents fixed in that loose and rapid way ought to have been subject to revision before now?—Well, I think so; I think, especially as regards area there were many cases altogether incorrect. We did not work with maps in those times.

4422. Do I understand you to say that in the rents fixed between 1881 and 1887 sometimes wrong boundaries were taken?—It is possible when we had no maps to guide us such a thing may have happened.

4423. May I put it in this way: The rents were undoubtedly fixed in a loose and rapid way?—There is no doubt about it.

4424. That is to say, the soil was not tested as it is now tested?—The soil, I think, was tested fully as much as it is now, I think so, my experience is that it was.

4425. Carry the period in your head that I referred to, that is 1881 to 1887, was it the habit of the sub-commission in that period to test every field on the farm?—As a rule, certainly.

4426. And to enter the character of the soil of every field on a return?—Well, we were not required, I think, up to that time to enter in our notes the different qualities of soil we found on the farm.

Mr. *T. W. Russell*—continued.

4427. Were you required to enter the carrying power of every field?—Not at first, certainly not.

4428. Were you required to test and enumerate the different classes of soil on the farm within that period?—No, I do not think we were.

4429. Then as a matter of fact did not the fixing of rents between 1881 and 1887 mean that you and the other lay sub-commissioner went and had a look rook round the farm with the farmer and the landlord attending you, and that you made up your minds, roughly, what the land was worth?—Hardly.

4430. Is not that pretty much the effect?—Hardly that. We inspected the land quite as carefully as we do now, but we had to guess as regards the areas. We had no maps; a certain area would be given in Court, and we had no means of testing the accuracy of that area.

4431. Were you a sub-commissioner in County Donegal in the years 1883 and 1884?—I think so.

4432. Will you say that your sub-commission in the county of Donegal tested every field, described its carrying power, and gave to the head commission the character of the different soils on that farm?—We tested the land I think as carefully as we test it now; I think so.

4433. Then what did you mean by saying that you agree with Mr. Commissioner FitzGerald that the process of rent fixing then was loose and rapid as compared with what it is now?—I do not know really whether it was more rapid then as regards the actual inspection of the land. We were as careful then as we are now.

Chairman.

4434. Did you do about the same number of holdings in a day then as now?—No, we did more than now, for the reason that they were not so scattered.

4435. You have stated that you now do about three holdings a day; how many did you do in those years that Mr. Russell is speaking of?—We did certainly more for this reason, that the holdings were not so scattered.

Mr. *T. W. Russell.*

4436. Then you have given as your opinion that the rents fixed been 1881 and 1887 would not be fair rents to-day. Would you consider that the rents that you fixed between the years 1881 and 1887 to be fair rents now?—No, I do not.

4437. You consider them to be too high?—I consider them to be too high.

4438. Now as regards new procedure. We have it in evidence that there have been, roughly speaking, 300,000 rents fixed since the commencement of the Land Commission. We have been told by Mr. W. F. Bailey that of these something like 45,000 will be entitled to serve originating notices next year to have new rents fixed?—Yes.

4439. May I ask, do you agree with Mr. Bailey in his general conclusions as to the new procedure

Mr. *T. W. Russell*—continued.

procedure necessary in those cases; that is to say, that in all non-contentious cases where no question of law and no question of improvements arises, that you would give the tenants an opportunity of having these non-contentious cases settled by a valuer without going into any court?—I go further than Mr. Bailey.

4440. Would you agree to that; I will take you further immediately?—I agree with that, yes.

4441. The next question I put to you is this: would you consider it safe for the tenant if he made the improvements, or for the landlord if he made them, to trust to a single valuer without the protection of a judicial tribunal such as the Sub-Commission Court is?—I think the result would be that the parties would be satisfied with the opinion of the Commissioner who would be sent down.

4442. Then do I understand your evidence is, that you would abolish the Sub-Commissioner's Court altogether?—No, I do not say that; but I would give the parties facilities, a means of settling free of cost, if they wished to avail themselves of it.

4443. Without regard to questions of law or questions of improvement?—I would let the Sub-Commissioner who goes down deal in a general way with improvements on the land.

4444. Do you think the tenants of Ireland would submit to that; do you think the tenants of Ulster would submit to it; I will take those first?—I really think they would.

4445. Do you mean that where the landlord and tenant agreed you would do that?—Well, I would like to see the Sub-Commissioner sent down in every case. Mr. Bailey, I think, only suggested it in certain small cases; but I do not see why every tenant should not be given the same opportunity of settling.

4446. Let me put it in this way: a very large number of cases that come before you are non-contentious cases, are they not?—No doubt about it.

4447. Mr. Bailey proposes that these should be all settled by a single valuer if the parties all agreed?—Yes.

4448. You go that far with him?—Yes.

4449. But you go further and would submit the case to that single valuer if the landlord and tenant agreed?—I would.

4450. Now can you give the Committee any information as to the main causes of tenants being ruled out of the Land Court; have you met sub-letting, for example?—Sub-letting has been a common cause.

4451. Would you say that it was the principal one?—I think so; I would consider that that is the principal cause.

4452. Now take the question of mill holdings; is not this the case; I will take a mill holding that comes before the Sub-Commission, and the legal Commissioner, or the head Commission, rules it out on the ground that it is not a purely agricultural holding; supposing that, owing to the milling industry having almost totally disappeared in Ireland, that mill ceases to work, do not you think it a very hard thing that that case is still ruled out while the mill has ceased from working?—Certainly.

4453. And do you know that to be the case in Ireland?—Yes.

Mr. *T. W. Russell*—continued.

4454. You were in Ulster in the early part of the Land Commission, were you not?—I was.

4455. Can you tell us if the Sub-Commissioners who went to deal with the Ulster custom had made any study of it before they went?—The Sub-Commissioners I was acquainted with were thoroughly up in the Ulster custom.

4456. They were, but do you mean the lay Commissioners?—Yes.

4457. Were they Ulster men?—My colleague was an Ulster man.

4458. You told us you had farmed only in America before you came here?—I have farmed in America and in Ireland.

4459. In County Wicklow?—In County Wicklow.

4460. And that you had been in Lord Lansdowne's office at Kenmare?—Yes.

4461. None of those qualifications would bring you to a study of the Ulster custom?—I thought they did; I know all about the Ulster custom. There are estates outside Ulster that have a custom similar to the Ulster custom; it is quite a common thing to find.

4462. May I take it as the sum and substance of your evidence that in fixing a fair rent a great deal of it, after all, in the head Commission itself is left pretty much to the discretion of the individual Sub-Commission?—Certainly, I think that is so.

4463. You "guess" at some things, and "take a shot" at others?—Well, I do not know about "guessing" and "taking a shot."

4464. These are your own words?—I think the word "guess" was applied in answer to a question as to specified value only.

4465. But a great deal of it, after all, must really depend upon the men who are sent?—As a matter of fact it does, no doubt.

Mr. *Brodrick.*

4466. Mr. Russell asked you a question as to the practice with regard to your assessing the value of improvements; he asked you whether, if the legal Commission with whom you were sitting laid down the law with regard to that, you would be bound by it?—Certainly.

4467. You have sat with several legal Commissioners, have you not?—Yes, I have.

4468. I want to ask you whether in practice, from what you have told us as to your practice in fixing improvements, or assessing improvements, you have or have not been left free in the matter?—As a rule we have been left free; but in any particular or important cases, of course, we are not free. An important law point does not arise in every case, even where there are improvements. It may be perfectly clear, as regards the ownership of the improvements, who should get credit for them, there may be no law point; I mean to say there may be a point that we should be all well acquainted with. If there were anything important in it, of course the legal Sub-Commissioner would give his ruling.

4469. But it is not within your experience that one legal Commissioner has ordered you to place improvements to the credit of the landlord, while another has left you to assess them on your own motion to the tenant in relation to the money expended, is it?—No.

Mr. *Macartney.*

4470. Before the rent is finally determined by the Commissioners, I take it you all meet together?—Yes.

4471. You and your lay colleague would discuss with the legal Commissioner the rent which you have assessed?—Yes.

4472. And I presume that if either you or your lay colleague had made any mistake in apportioning any proportion of the increased letting value; I mean to say, had made a mistake in law in apportioning it. I am talking of law, the legal Commissioner would necessarily become aware of it in discussing it?—If we had in our reports shown that we had given credit to a tenant for a certain improvement which was by law the property of the landlord, we would correct that after discussing the matter with the legal Assistant Commissioner.

4473. If you had made a mistake, in the opinion of the legal Commissioner, supposing there was a difference of opinion between you and your lay colleague, what would happen?—Of course, that would be decided by the legal Commissioner.

4474. You would discuss the difference of opinion which arose, for example, suppose that you had differed as to the proportion of the increased letting value which you gave either to the landlord or to the tenant, how would that be dealt with?—Any question in dispute between the lay colleagues would be referred to the legal Sub-Commissioner, and we would discuss the matter.

Mr. *Macartney*—continued.

4475. And if you had violated any legal proposition laid down by the Court of Appeal, it would necessarily come to the knowledge in this discussion of the legal Sub-Commissioner?—Yes, it would.

4476. He would thereupon set either you or your colleague right, would he not?—Yes.

4477. At page 585 of Cherry, referring to the question which Mr. Leese asked you, is not this also dated, that where the landlord appeals, the rule is that if the judicial rent be affirmed, the tenant is entitled to the costs; if the judicial rent be reduced the tenant is entitled to the costs; if the judicial rent be increased, but the former rent not restored, each party abides his own costs; and, if the former rent be restored, the tenant pays the costs; I take it that that is the practice?—I suppose so.

Mr. John Cunningham, called in; and Examined.

Chairman.

4478. What office is it you now hold in the Land Commission?—I am now resident inspector, in connection with the Purchase Department; "resident inspector" is the official title I now have.

4479. Resident inspector, specially in connection with purchase?—Specially in connection with purchase.

4480. We are not inquiring into purchase. What offices have you held since the Land Act of 1881 was passed?—I was appointed lay assistant Commissioner in 1881. I began in December, and continued on until end of 1885. I was then off a year and some months. During that time I was engaged as scrutineer for the variation of judicial rents in 1887. I was then re-appointed in the latter part of 1887 as lay assistant Commissioner, and engaged in fixing rents until about three years ago. Since that time I have been mainly engaged at Appeal Court valuing, until I was appointed to this office.

4481. How recently were you appointed inspector?—Just a year ago now past.

4482. Then you have been for nine years, we will say, assistant lay Commissioner?—Yes.

4483. You have been a special court valuer for two or three years?—Yes.

4484. You were a scrutineer when variations were made in accordance with the scale of prices under the Act of 1887?—Yes; I have also been employed reporting on crops and at the distribution of seed under Mr. Balfour's Act, and things of that kind.

4485. But still you are quite competent to give us evidence as to the practice of the assistant lay Commissioner?—I do not know about being quite competent; I have had a good deal of experience of it.

Chairman—continued.

4486. I mean so far as experience can make you competent?—Yes.

4487. Will you tell us what your previous training was, whether you were a farmer, or how you acquired agricultural knowledge?—I was a farmer; I farmed myself.

4488. In Ireland?—In Ireland, county Donegal, from 1863. My father had farmed, and I had seen farming carried out since my earliest recollections; for myself I began to farm, I think, in 1863, and I am farming, yet, unfortunately.

4489. Have you ever held any agencies?—I had a small land agency, in which there was a rental of about 600*l.* a year; but the tenants were my neighbours. The estate was purchased by my advice, by a friend of mine, and I managed the property until I was appointed assistant Commissioner.

4490. In what parts of Ireland have you chiefly done duty as assistant lay Commissioner?—I began in the south; I was in Kilkenny, and Waterford, and Cork, for about three months or four; then I was taken to Ulster, my native province, and I was in Ulster then, I should think, for three years. During those three years I was once away in Galway for a short time.

4491. But substantially you were three years in Ulster?—Yes.

4492. After that what did you do?—After that I was in Mayo, I think, for a year and a-half. I was in Clare for a long time, and after that I worked in county Dublin and the adjoining counties, Meath, Louth, Wicklow, and Kildare.

Chairman— continued.

4493. You have been in the four provinces?—Yes. I have worked officially in every county except Monaghan.

4494. You have been assistant lay Commissioner in every county, except Monaghan?—No; I think about four. My experience in these other three would be as an Appeal Court valuer.

4495. Of course, your work was mainly rent fixing?—Yes, largely. I am still engaged in that. The month before last I was Appeal Court valuing.

4496. I do not think we will trouble you to tell us what the ordinary routine practice has been. Mr. Bailey and Colonel Bayly have told us enough of the method of valuing going on to the land, and so on; but when you get on to the land, what do you do? You have heard the evidence of Colonel Bayly, the last time the Committee met, and to-day, and you have heard that a great many questions have been asked as to improvements, and as to the proportion of increased letting value due to tenants' improvements that is deducted in fixing a fair rent, and we have heard a great deal about improvability, would you give us your views upon the points that have been raised?—I think that I have not made the distinction that Colonel Bayly seems to have made between, what he calls, major and minor improvements. My experience has been that we have dealt with all improvements pretty much upon the same principles. In the first place, we were limited to the improvements that were proved in court; that is, as to giving any credit for them.

4497. To the tenant?—To the tenant; alongside of that, however, we were in the habit when we saw substantial improvements, not proved in court, of mentioning them in our report, and discussing the matter again with the legal Commissioner; but we could not exempt them from rent, except so far as they were proved in court; but we always tried to investigate and see whether there were improvements there or not of any value.

4498. Then, in the case which we have been hearing about this morning, where the tenant has expended a hundred pounds upon improvements, with the result that the letting value of the land goes up from 10*s.* to 15*s.* per acre, what portion of that 5*s.* increment would you give to the tenant, and what to the landlord? Would you give it all to one, or all to the other?—I must first know on how many acres the hundred pounds was expended?

4499. Yes, that is so?—In the great majority of cases (I would like to guard anything I may say afterwards by this), I am afraid that the money laid out on improvements in Ireland will not result in a return exceeding the ordinary commercial interest, that is supposed to be fair, or an average of 5 per cent., which it has been the habit to apply, and which has been largely put forward by the tenants themselves; they invariably, in putting in their claims, adopt 5 per cent. They say they had spent so much on drains, so much on fences, 40*l.* or 50*l.*, or whatever it is, and on the whole outlay they claim 5 per cent.; that is put forward by themselves, and by their valuers.

Chairman—continued.

4500. Do I understand that 5 per cent. upon the outlay represents the full increment to the letting value produced on Irish improvements?—I think it does fully, as an average.

4501. Then when you have allowed that 5 per cent. increase in value, and given the tenant credit for that, you consider that the whole value of the improvements has been exhausted for rent-fixing purposes?—I did not say that I did allow 5 per cent., but in many cases I would allow 5 per cent., because I think that would, fairly enough, represent the justice of the case; but I do remember that there was a very common use of 5 per cent. in the calculations.

4502. But you would consider that if you had allowed 5 per cent. upon the outlay, and deduct it from the rent in that proportion, you would then have done all that the tenant's claim for improvements, required?—No, not in every case. In exceptional cases the tenant's outlay resulted, say, in 8 per cent.; and in cases of that kind my practice would have been to have noted that, and discussed the matter with the legal Commissioner; and the result, I think, would have been with almost every chairman with whom I have worked, that the tenant would have got the whole 8 per cent., unless the improvement was of a very permanent kind.

4503. Of course you must know that the object of the questions I am now putting to you is to ascertain from you how you would deal with that 3 per cent., the difference between the 5 per cent. and 8 per cent., which is the total increase of the letting value?—Yes.

4504. How would you deal with the 3 per cent. of difference?—I would recommend to my other two colleagues, that it should go to the credit of the tenant, and I think they would very likely agree. If the improvement was of a durable kind the 3 per cent. might be divided.

4505. I am not asking what the procedure would be, or how they would deal with your recommendation; I am asking you, rather, how, in your own mind, you would distribute that 3 per cent.?—I would note it in my field-book, to the credit of the tenant; give him the whole advantage of his outlay in all but exceptional cases.

4506. You would give him, then, not merely 5 per cent., which is a fair interest on his outlay, but you would give him 8 per cent., the total?—Yes; and if I may explain, there might be for this a further reason; that same tenant, on some other item of his improvements, would probably have to be put off with 2 per cent. There is a very large proportion of the drainage and reclamation done in Ireland, which, owing to the nature of the soil, and perhaps also to the average skill of the tenant is not very effective. The drainage may be on, say, five acres; that is the whole that the claim might be finally settled at; but on an acre and a-half of that the drains would have ceased to be of any practical value in a short time; the other three and a-half acres of the five might yield 8 per cent.; I would never think of giving him only 5 per cent. on the three and a-half, while he had lost his outlay on the other one and a-half. There are very few cases of the kind, cases where

Chairman—continued.

there is a larger return than 5 per cent., or sufficiently large to require special aetention, but if such a case occurred we would discuss it together and I would press such considerations as I have mentioned. I do not remember such a case as is here supposed where an outlay of 5*l.* on an acre increased its letting value so much, but if it did come before me, I would certainly note it and make it the subject of very anxious discussion as to how it should be apportioned.

4507. That, of course, brings us to the difficult question of improvability when you are fixing a fair rent, improvability being, as you have heard, those inherent qualities in the soil which by reclamation or other improvements are capability of adding to the letting value of the land. Now when you fix a fair rent how do you analyse or split up the elements that you consider?—By the examination of the soil; usually a case of that kind would be reclamation of bog, peaty soil which was very easily effected.

4508. As I understand Colonel Bayly, he said that he looked at three elements; he looked at three things: first, the original value of the land (not very different from prairie value, as far as I could make out); second, the quality, the improvability; and, third, the improvements actually effected. Would that be your analysis of the elements you would have to consider in fixing a fair rent?—I think these all go into it; my method would be, on looking at the bog, to see if it had originally a free outlet for the water and without any extra sinking. If to get rid of the water they have to go far beyond the particular "acre" he is trying to reclaim, that would very much affect the question; but if it were friable open peat, with a good fall and outlet, 3*l.* might produce a return of ten per cent. I think, in that case, part of the improvability would go to the landlord and part to the tenant, according to the probable duration of the improvement.

4509. When you are going to fix a fair rent, do you have in your mind any such element as the value of the land in a wild state?—Necessarily I would try to find out that, because without there would be no way of knowing what improvement had been made, or how the work done would have operated. Unless I could form some estimate of what it was before the work began, I could not know the result of the work, and therefore I must try to get at it as best I can by looking at the land alongside of it and other things, and in that way I would form the best estimate I could.

4510. Suppose you saw a holding upon which no improvement had been made, would you, in fixing a fair rent, take into account those qualities of the soil which render it capable of improvement?—Certainly not, except so far as they might at that day be producing signs of improvability in the form of more or less wholesome pasture, or something of that kind of present value the grass would be a little sweeter than in a place where it could not be so easily improved.

4511. That is to say, you would consider that the fair rent of a holding in that condition would be the value of the holding as it stood, and without reference to any latent and dormant qualities in it which might some day or other, under certain treatment, produce an increased value?—Certainly, that would be my view, and that has been my practice.

Chairman—continued.

4512. You have something to tell us about the withholding of turbary, have you not?—I had in my mind, when that was referred to, some cases where turbary in my opinion was essential. The usual thing in my experience was that the landlord, who had as a practice granted the privilege of turbary, did not object to having that put into the Order and letting it become a legal right; but there were some instances where it was refused, and, in my opinion, imposed a hardship of a grievous kind.

4513. Would you describe a case of that sort rather more fully; what exactly took place?—I know of two particular estates, both large, one in county Tyrone and one in county Sligo, where, from the fact of the estate being large, the tenant's possibility of getting any turbary was confined to the one estate. If it was a small estate, and the landlord would not give the tenant turf, he could possibly go and buy it on another estate without much loss, and he would have no great grievance; but where the estate happened to have the only bog available for him, as in those two cases, it is very different. There I recollect that on behalf of the landlord it was objected that the right to turbary should be put into the Order; and the tenants, through their solicitor and by their own expressions made a very hard battle in Court to get the turbary included, inasmuch as they alleged that some of their neighbours who had formerly gone into Court had suffered by having a charge put on the turf which practically wiped out the reduction they got. These are very exceptional cases, but still I think in any reconsideration of the law they ought to be provided for. One of the cases especially affected a large number of people.

4514. What provision would you make them; how would you put your form?—I would give the Land Commission power where it was proved to their satisfaction that the tenants had been in the habit of getting this as a privilege, to include it so long as the turbary lasted. Of course if it could be proved that there was no possibility of providing turf none could be provided, and therefore it would have to go; but where there was ample turf and the estate, I think there would be no hardship imposed if made a legal right—a fair addition to the rent being made.

4515. What actually happened; what did they do in the two cases?—In one of the cases, at any rate, it was stated by the man in the witness-box that his neighbour, whose rent was no larger than his, and whose holding was no larger, had had his rent reduced by about 2*l.* 10*s.*, and that the following year he had to pay 2*l.* 10*s.* for his turbary, which formerly he had paid only a shilling for. That was stated in the court-house in the presence of the landlord's representatives, and they did not deny it.

Mr. *Sexton.*

4516. Had you no power to deal with the question?—Oh, no; there is no power in the Act to deal with that. The turbary is outside the ambit of the holding, and the Land Commission have no power; it is the landlord's property by law.

4517. What you suggest is that when the turbary is outside the holding, so long as it is on the estate, you would secure, at the same time, that you fix fair rent, the turbary upon such terms as you might decree?—Yes.

Chairman.

4518. In other words, that the landlord should not take back in increased rent for the turbary what had been taken from him in the reduced fair rent?—Quite so. I would like also to say this, that when this was being pressed in court it was clearly stated what was our practice that where turbary was included as a right we put on what we considered was a fair substantial consideration for it. It would add to the rent of a small holding like that 5*s.* or 10*s.* a year; but it became a right then so long as the turbary lasted. Of course, I do not mean that the turbary should be thrown in for nothing, or anything of that kind.

Mr. *M'Cartan.*

4519. It was only by consent of the landlord, was it, that it could be done?—Yes; where the landlord consents to have it put into the order, we put on for it whatever we think a fair consideration, and I think it is stated on the pink form, at least in the later forms of the pink form, how much is allowed for turbary.

Chairman.

4520. It is not on the pink form?—I think there is a form for turbary grazing and other rights.

4521. Well, I will leave that for the present; some other members of the Committee, perhaps, will ask questions about it. Do you agree with what Colonel Bayly said about prices; do you take prices into account?—I do take prices into account.

4522. How do you manage to make an allowance for prices?—Just in the way I take any other experience. In 1881 we were at the end of a series of good years. That was in my mind, and I suppose it was in everybody's mind who tried to estimate the value of land; but as to using it for the purpose of ascertaining the produce on a particular holding, and applying prices published in a schedule, or anything of that kind, I think that would be impracticable.

4523. And you do not consider prices in that way?—We considered them very much in 1884 and 1885, when we found that prices were still dropping, dropping, dropping; and we felt uncertain whether we were right in holding to a former standard of prices; but, as a matter of

Chairman—continued.

fact, I think we did stick to that too long. In that way it affected our minds very much.

4524. On another point, do you agree with what has been said upon a question that I put to the last witness upon disabilities under which these tenants find themselves very often in court in making out their case?—Yes; do you mean as to their status altogether in the sub-letting or sub-division?

4525. No; whatever they have got to prove?—About improvements?

4526. Whatever improvements are the most important?—I think the necessity of giving legal proof of improvements by the tenants does often impose hardship and injustice.

4527. Often?—Often; yes. As a rule, the tenant has no records, and he has no idea of what legal evidence is; he comes in often relying upon what he believes to be perfectly true, and what is, I think, often perfectly true, that is his knowledge, acquired from, perhaps, his father or somebody else, and his observation that there are drains, &c., upon the land. Then he is asked: "Did you see the work done?" He says: "No, I did not see the work done." That ends it for him.

4528. You speak of legal rules of evidence; perhaps we ought to have asked Mr. Bayly this question, but when these tenants are being examined to prove their improvements or other matters, are they very rigidly held to the legal rules of evidence?—I think, in the majority of cases, nothing short of having actually seen the work done would be allowed. There are exceptions, just as there are on the other side; there are exceptions, no doubt. I know some agents who would say, "We are perfectly satisfied that this tenant will say nothing but what he believes to be true, and we will leave it in the hands of the Commissioners when they come to test the thing." I have known that to occur sometimes.

4529. Of course these disabilities, as to which I am asking you, are heaviest in the worst districts, or the poorest districts?—Yes; the tenants are less intelligent; they have fewer documents; in fact, hardly any tenant has a document. But what I met with very much in Mayo was, where the tenant was a widow; I have known many cases where she was able to say she had seen work going on, but had paid no particular attention to it, and when she was cross-questioned a little she broke down altogether, and could not give legal evidence; no one can give legal evidence except the man who did the work, who made the drains himself, or some one who saw the work done.

4530. I do not see how you are going to get over that difficulty; you must have evidence of some kind or other?—My opinion would be that it would be better to leave it to the Commissioners.

4531. So you would take the view that the presumption should always be in favour of the tenant?—I think that is the lesser evil of the two, certainly.

4532. You think that taking the presumption

Chairman—continued.

as being universally in favour of the tenant is a less evil, and would do less injustice than the present system, by which these poor people suffer the disabilities you have been describing? —Yes; very decidedly, I think so.

4533. You have been in Ulster; could you tell us what the effect of the Ulster custom has been, according to your experience, in lowering rents. I mean to say, has it been very material?—I do not think the Ulster custom has lowered rents in any way.

Friday, 15*th June* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Macartney.
Mr. Carson.	Mr. M'Cartan.
Mr. Clancy.	Mr. John Morley.
Mr. Dillon.	Mr. T. W. Russell.
Mr. Hayes Fisher.	Mr. Sexton.
Mr. Fuller.	Colonel Waring.
Mr. Leese.	Mr. Wharton.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. JOHN CUNNINGHAM, again called in; and further Examined.

Chairman.

4534. I THINK you wish, with the permission of the Committee, to refer again to that question of improvability which you dealt with in Questions 4507 and 4508?—Yes.

4535. There was some apparent inconsistency between your view and that of Mr. Bayly; I understand you want to say something further on that matter?—Yes; when I answered I had only seen a very imperfect report of Mr. Bayley's evidence.

4536. Colonel Bayly's?—No; I mean Mr. Bayley's. Looking at the official report I see an answer to Question 1192 (which is very close to the question where the exact proposition was put to him), in which he seems to me to lay down a principle that would include all that I hold about it, namely, that in dealing with increased letting value, and what interest ought to be allowed to the tenant for it, you are controlled, and have to be guided by the durability of the improvement; the number of years, in other words, in which he would have the opportunity of recouping himself. I think if that answer if given full scope to, it covers all I said; and I must add, that I understood Colonel Bayly to have said that, except perhaps as regards very rare occasions, about buildings, or some very permanent improvement.

4537. But what is your proposition, apart from the agreement, or the difference between you and Colonel Bayly, or Mr. Bailey; what do you wish the Committee now to understand as your view?—My view is that if the outlay of 100*l.* (as supposed in the case put), had been expended on bog land in Ireland, before any person could answer how much they would give in respect of that 100*l.*, they must know the class of the improvement, and the probability of its duration. And either in drainage or in reclamation of the ordinary bog land of Ireland, the improvement is scarcely more durable than the increased letting value, and improvement resulting from manures, in County Dublin, in the clay tillages, where there is a greater percentage added by the tenant's outlay, and where no person, under Adams *v.* Dunseath, or anything else, would think of giving any of it away in rent again; and in County Down, if you go to the other part of the country, where grass-seed is produced, a tenant by a 1*l.* outlay would add more to letting value, or as much probably as results from a 5*l.* outlay elsewhere, on reclamation. The tenant very often applies, I think too often, nitrate of soda, and an outlay of 1*l.* per acre on that land would result in increasing the letting value a great deal more than the average results of drainage or of reclamation in the vast area of Ireland.

Chairman—continued.

Colonel *Waring.*

4538. Before you pass from that, would not that merely mean that it would result in a very large crop for the year?—No; it would increase the letting value on the spot. If I go on the land and look at it, I take that into consideration, but do not add to the rent because of it.

4539. I understand then that what you mean is this, that going on the land, after an application of nitrate, you would necessarily value that land higher?—No, certainly not; it would all be left to the tenant.

4540. I mean that; you would value it higher so as to give the tenant the benefit of the improvement?—I would not value it higher, I would leave the results of his nitrate of soda to himself, and exclude it from any rent.

4541. You would not mulct the landlord on account of the great crop which had been stimulated by the grand process of putting on nitrate? No; in dealing with all improvements, I think the aim generally, indeed universally, of the Land Commission would be, to preserve intact the antecedent value to the landlord, and that no dealing with any improvement, or anything else, should be allowed to encroach upon that antecedent value.

Chairman.

4542. You are satisfied now, are you, that you have made your view clearer. Of course, gentlemen on the Committee will put questions to you as we go round?—I think if the Committee would bear with me for a moment, I should like

Chairman—continued.

like to say that from 1192 on to 1200 the question slides gradually, it having been first dealt with as a building, on to land again. If I were with Mr. Bailey as a lay assistant to him, and we came upon a building put up by the tenant, what we would do I will tell you. In 1195 and 1197 the tenant's outlay was spoken of as a 100*l.* laid out on buildings, and the answer that appears in the official report (I think there must be some error) is that we allow the tenant 5 per cent. for it. I think that is a misprint, or something. A 100*l.* laid out on buildings by a tenant is never valued, in my experience, in that way.

Mr. *T. W. Russell.*

4543. The outlay was not on buildings at all; that is a mistake; but it is only put there as a supposition case?—Five questions later it slides in again from buildings.

Chairman.

4544. I do not think you need go on with Mr. Bailey's evidence; you have stated your own view, have not you?—I think I have, now; but I would like to say that I think, taking Mr. Bailey's two answers together, they are quite consistent with my answer. One other word I would like to say in reference to the outlay on this reclamation.

4545. Is this a correction which you want to make in your own evidence?—No, I want to enlarge my own evidence slightly.

4546. This is a correction you want to make, or an amplification of your own view, is it, because we do not wish you to revise the evidence of other people?—No, it is altogether my own practice; I have extracted it from a field book which I had on the land (and which I have here), for the purpose of illustrating how we deal with it.

4547. What is the "amplification" that you want to make?—These are five cases, selected out of this book, as illustrating how we deal with tenant's claims for reclamation of bog in Tyrone in 1891.

4548. What do they go to show?—They go to show the amount of the tenant's claim, the amount the landlord admitted, both in extent and annual value, and the amount that the Land Commission, or, at least, that I allowed for it.

4549. I am sure you have good reasons for doing it, but what is the reason for taking out these five cases from all the hundreds of cases you have heard of; what is it to illustrate?—I want to put it as a substitute for a supposed case which has been put here, and which is problematical.

4550. That we do not want; we do not desire you to correct other people's evidence?—It was put to me, though.

4551. Where?—I was told what Mr. Bailey had said.

4552. Have you got the number of the question to which you are referring?—I have not, because I could not get the official reports. I and could not get them.

4553. Will you tell us what is the point then?—I will not ask to put these cases in; I will merely refer to them if I am asked about it.

4554. Yes; you have told us that you have

Chairman—continued.

practised, not only, as it were, as an Assistant Commissioner, but you have also told us that for considerable periods of time you were engaged in Appeal Court valuing?—I was.

4555. Of course that does not prevent your remaining an Assistant Lay Commissioner?—No.

4556. Now I want to ask you this; do you, when you are acting as what you call "Appeal Court Valuer," bring any fresh principles, or apply any fresh or different standards as to value from those you apply when you are on the Sub-Commission?—Not any.

4557. That is to say, you value improvements as an Appeal Valuer just as you did when you were an ordinary Lay Sub-Commissioner?—Just the same.

4558. What do you do when you are acting as Appeal Court Valuer; what is your *modus operandi*?—I take the entire file (which includes the original application, the order, the minute, the pink form, and a copy of everything that the Sub-Commission had; files are handed over to me; I then group them, and arrange for days on which I can inspect groups of them on the same day; I then send notice to the parties.

4559. I would rather you took what you do in a single case; you get the file?—I commit the particulars on which I work to a Field book; very like the Field book that is used to the Sub-Commission. I have only the result of the evidence on the pink form of the Sub-Commission; all the details I put in my Field book; I notify the landlord and the tenant, on a printed form that I have for the purpose, that I intend to appear on the lands on a certain day, and I give the hour. When I arrive there I see the tenant of course; I see by the papers whether the buildings are claimed by the landlord or not.

4560. By "the papers" you mean the report of the Sub-commission?—Yes, the File. If the buildings are claimed by the landlord, I also have before me the rent which the Sub-Commission considered fair to allow the landlord in respect of those buildings; I then examine them for myself as carefully as I can; I then pass out on the land, and I repeat exactly what I do on the Sub-Commission; that is to say, go into every field, or as many as I think necessary to give me a proper and fair impression of the holding; and having dug the soil I question the man about the improvements stated; I ask him to point them out carefully to me, and if there are any others which he claims to have made to be good enough also to draw my attention to those; I keep a note of all that, and make a valuation.

4561. In making that valuation you make the apportionment for the tenants' improvements for yourself?—I do; for myself.

4562. You go alone?—Yes, sometimes, and sometimes with a colleague.

4563. You do not take for granted anything the Sub-Commissioners have done in the way of that?—No, I go out perfectly free and independent to report for myself, and to see what has been admitted or proved in court as to the improvements.

4564. Of course you have not had the advantage,

Chairman—continued.

tage, which we must call it, that they have had, of hearing the evidence in court?—No, I am without that.

4565. Otherwise you do exactly what they do on the land?—Quite the same, I think.

4566. You go over all the considerations and facts afresh?—Yes.

4567. And form your own judgment?—Quite so.

4568 Then you draw the result of that up in a report of some kind?—I draw the result of that up in a report which is very like the pink form, not quite like it, but it is practically the same report; I put down on that report answers to the questions which are printed there, which are practically the same questions as in the pink form, and report on the description of the holding generally and on the improvements.

4569. And you include in your report, of course, as the main point of it, what you consider to be the fair rent?—Yes.

4570. Then what do you do with that report?—I attach that also to the file that I had retained from the time I got it; I hand all back, and my field book, which is rather more detailed; it gives a field-to field valuation, it is more of a confidential nature; it is practically the same, but more in detail than appears on the form.

4571. When you say "more of a confidential nature," do I understand that the other report is accessible to the landlord or tenant?—Yes; and the result of that, as to how much I consider a fair rent, is sent, whether they apply or not to both parties. If my report tallies pretty much with the Sub-Commission report, as a rule, the appeal is withdrawn, and there is no more waste of time or cost about it.

4572. Does that often happen, the withdrawal of the appeal in consequence of your valuation?—Yes, I think there is a very considerable proportion in every list which the Appeal Court makes out for a sitting that would never come up for hearing when they appear in the town, they would have been withdrawn.

4573. You cannot give us any sort of percentage?—No, I would never know anything more about it except by accident; I would not hear of what happened.

4574. You said a "very considerable proportion," and I was only wondering whether you could put a figure to your "considerable proportion"; if you cannot, never mind?—No; Mr. Franks, the secretary, could give that.

4575. After you have drawn up your report, and sent it in to the Chief Land Commissioners, do you have any communication with them further?—No.

4576. You never have a conversation with any of them?—No. When I say "not," in a very particular case where "true value" came, in a very complicated case where there was a conflict, I once made an explanation merely of what was in my report.

4577. You mean, then, that in your experience only once did the Commissioners apply to you for what lawyers call "further and better particulars"?—That was only once; and it had reference to a complicated case where I gave alternative reports; that is to say, in case they

Chairman—continued.

decided one way, such and such an amount, and in case they decided otherwise, then another amount.

4578. They never send your reports back in any way?—Not at all; and they never interfere with my free action in the matter in the least degree.

4579. One or two other questions only before I hand you over to other members of the Committee. You have, I should think, with your large experience, formed some opinions as to the efficacy and satisfactoriness of the process in which you take part. Have you formed any view as to the costliness of these proceedings?—Yes; I think it would be a great improvement if they could be simplified, in other words, if the work of the Land Commission could be more confined to the fixing of a fair rent and exclude from their consideration (as far as could be done), questions of title, questions of status and administration, and things like that. I think there is a great waste of time as regards that, and the court is not best constituted for dealing with it. For instance, in the Sub-Commission Court, two of us who are laymen are sitting there, hearing arguments that in my opinion are not very relevant to the main issue.

4580. What would be the good of the legal Commissioner in the case you suggest?—For contentious cases, such as where questions as to whether a particular relief ought or ought not to be allowed, would come in.

Mr. *Sexton.*

4581. What would you do without a legal Sub-Commissioner to declare the effect of the interpretation of the Act by the judges?—If the present Act unamended is to go on, I do not think you could do without them; but I thought there was a pointing at something of a better procedure, and I think, now that agriculture labours under so many economic difficulties, it is hard to have it surrounded with such difficulty and uncertainty as there is in reference to law points and law matters.

Chairman.

4582. Going back to one final question as to what you do as Appeal Valuer, do you think that process could be dispensed with; do you differ in your award, on an average, so much from the Sub-Commission, whose award you are, as it were, revising, as to make your process really very valuable?—I think, certainly, having regard to the cost of it, and all that, that it is not very valuable, judging by the returns that I see; the average alteration made in the process of appeals has only been 0·2, or something like that; I think that is a sign or indication of the value of this process. On questions of value I would be strongly inclined to let the decisions of the Sub-Committee be final.

4583. You would not give an appeal on value, then?—I think in some cases it might perhaps result in hardship, but I think those cases are so very rare that I have a strong leaning to the view that it should be dispensed with in that respect.

 4584. I did

Mr. *T. W. Russell.*

4584. I did not hear your examination-in-chief, but I believe you have been on the Commission since 1881 ?—Yes, with a gap of a year or so.

4585. Do you think that the process of rent fixing that obtained between the years 1881 and 1887 was at all as scientific as that which obtains now ?—I think it was not quite so scientific, in the sense that the returns and the marking on the map involve more labour and consequently more care to that class of details.

4586. Do you think as much pains were taken in that period as has been taken since ?—Yes, I took as much pains; I have been referring back to an old book, and in the very first three months I think I made as many divisions of the land and as many holes in it, and as careful an inspection as I am doing or as I did on the last land I valued.

4587. You had no maps at that time ?—We had no maps.

4588. You made no return of the character of the soil as you do now ?—No.

4589. Did you calculate its carrying power if it was pasture ?—No, I did not; but I do not do it yet very often in fixing the rent; it is a sort of secondary operation.

4590. But you have to return it on the pink paper ?—Yes, I do.

4591. I will now take a pastoral farm; is the carrying power of a pastoral farm not a main element in the fixing of the rent ?—It is, the carrying power of a tillage farm is a main element; that is, how much crop it will carry and so on; I think the two things run very much in the same direction.

4592. Would you say that the rents fixed by the Commission between 1881 and 1887 are now fair rents ?—No, I think not; I consider they are too high for the present state of matters.

4593. Then that leads me up to this: do you think the statutory period too long ?—I do decidedly.

4594. Have you any suggestion to make to the Committee as to the proper statutory period ?—The Cowper Commission recommend five, I would prefer seven years myself.

4595. But you are quite clear that when the rents that were first fixed begin to fall in, even on the present principles and with the present law, they would be subject to a serious reduction ?—I think they would; there is another reason before I pass from it namely, I consider a term of 15 years a great embarrassment to the men engaged in fixing the rent; it involves so much of prophecy that I have often had (and I know other men have had) great anxiety in looking at whether what had obtained for the past 15 years was going to continue, or whether we could hope for a change, merely guessing whether there would be a change or not; if it was only for five or seven years men would feel that they could deal more freely with the facts as they exist to-day.

4596. We are all aware, of course, that there has been a very great fall in the prices of all agricultural produce, especially since the year 1885 ?—Yes, I would say from 1883.

4597. Do you think the Land Commission in fixing rents since 1885 have taken that fall of

Mr. *T. W. Russell*—continued.

prices into calculation sufficiently ?—I think they have taken it into calculation; I know I have myself, but whether I have done it "sufficiently" is a very difficult question to answer I think.

4598. Do you consider prices in fixing the rent ?—Yes.

4599. Did you hear Colonel Bayly ?—Yes.

4600. Do you consider them as he considered them, in a general way, or do you consider them specifically ?—I think they specifically affect my valuation in every farm I go upon.

4601. I see you have answered that question, I will not proceed further with it; now as to future procedure; you think the present procedure is costly and complicated ?—I do; I think it is unnecessarily so.

4602. Now, Mr. W. F. Bailey made a suggestion to the Committee as regards future procedure; shortly it amounted to this, that in all non-contentious cases, where no question of law arose and where no improvements were in question, he thought that the landlord and the tenant might unite in agreeing that the rent should be fixed by a single valuer going over the field, but that in all cases where either questions of law arose, or where questions of improvement were involved, he thought the present machinery absolutely necessary; now, do you agree with that; I think I have stated it fairly; first of all, do you apprehend the distinction ?—I think I do.

4603. Will you say whether you agree with that, and if you disagree with it, in what ?—I agree with it in the main, but I would modify it in one or two respects I think.

4604. Proceed ?—I do not think that the presence of improvements would necessitate the full court; and I think I would have two laymen together, and let that be the first procedure practically in all cases; the right and risk of appeal would lie then with either party. If notice of appeal was given within a month I would let it go before a full Commission, presided over by a legal chairman. I consider that the improvements are just as much an integral part of what can be dealt with by the two lay commissioners free from legal refinement as the soil.

4605. I will put this to you; we have had it in evidence that in the case of agreements to fix a fair rent which do not come into court, but which ought to be registered, and which, when registered, become judicial rents, that these, in certain cases, have been proved by going before a Sub-Commission to have been too high. Mr. Bailey told us that some of them had been reduced 40 per cent. Where a landlord has any power over a tenant, do not you think that he has some power to induce him to consent to a course that is not to his interest as a tenant ?—I have had experience of that kind myself. We have had many cases before us of agreements that had not been registered; we have revalued them and made some reduction. I do not remember anything so high as 40 per cent., but I know that in all cases of that kind there was a further reduction made beyond the reductions that were made under the agreements.

4606. Have you stated the whole of the modifications you would be prepared to make on Mr. Bailey's

Mr. *T. W. Russell*—continued.

Mr. Bailey's proposal?—I think so, as far as I remember.

4607. In your experience as a Sub-Commissioner, what has been the chief element in excluding tenants from court; have you found sub-letting to be a serious one?—A very serious one, and sub-divisions.

4608. Take the question of sub lettings, please. Have you had any experience of fixing rent on mill-holdings?—I have.

4609. You have?—Yes, I have had several cases of it, both as Sub-Commissioner and Appeal Court Valuer; I may say, too, that I have had a good deal of experience of milling myself.

4610. I was aware of that, but I am going to put the question to you, not as a miller, but as a Sub-Commissioner. Is it not the case that, in Ulster at all events (of which I know something myself), that there are a great many scutch mills, and flax, and that in order that these scutch mills should be worked, there must be labourers; these labourers must have houses; and is it not a fact that if these labourers at these scutch mills are provided with cottages by the farmer, he is ruled out on "sub-letting"?—I have had no experience, on any Commission I was on, of that, but I have seen it reported, and I know the first part of your question is a very common thing, that is, that the farmer on whose holding the mill is must have cottages for the labourers. If he has not good cottages for them the people will go away, and he will lose the whole of them.

Chairman.

4611. Were not you concerned in one of the leading cases about mills, Boyle *v.* Foster?—I was; that was as an Appeal Court Valuer. I suppose I was sent there because of my supposed experience of mills, it was a very hard-fought case.

Mr. *T. W. Russell.*

4612. Will you allow me to put this question to you about mills: take a case where there is a substantial mill upon the holding, that owing to the failure of the milling industry, with which I suppose you are perfectly familiar——?—Yes, I am, too familiar.

4613. That mill has ceased to work. Now whilst it was in work it could not come under the Land Act, because its existence went to show that the holding was not an agricultural holding?—Yes.

4614. When it had ceased to work would it have any chance of coming in as an agricultural holding; have you any experience of that?—Yes; Boyle *v.* Foster is practically on that line, the mill had practically ceased to work.

4615. Was the holding excluded in that case? The holding was excluded. It was not by the Land Commission that that was done.

4616. Never mind, it was excluded. My point is this; that, taking a case where it would be perfectly reasonable and fair to exclude the holding because of the mill being a substantial part of it, when the mill absolutely ceases to work, and may be in ruins, the fact that the mill is there and is part of the holding excludes it under Boyle *v.* Foster?—Yes.

4617. Then to return to sub-letting; do you find from your experience that sub-letting is one of the main causes of exclusion from the Act?—Yes.

Mr. *T. W. Russell*—continued.

4618. Do you find that it bears very hardly upon the tenants?—I do. I have had, I think, to do with one case (I have seen it referred to here), where every member of the Commission felt that it was a very great grievance. That was a case where the landlord (I think Sir John Ennis) had consulted the tenant of the large holding as to how he should deal with a fringe of small holdings consisting of about seven or nine cottages in Westmeath; and during that state of matters the tenant of the large holding had advised the landlord as to the rents that ought to be put on these small men. As time went on the large tenant was taking out a lease and the whole were included, the seven or nine small tenants. With mud cabins and a fringe of bog all round the main large holding. These small tenants being generally in mud cabins of a wretched kind, with little bits of reclaimed bog for gardens and small plots, were all included in one "take" under this lease to the larger tenant, who had been applied to as a friend and adviser of the landlord. That landlord passed away, and the estate, when we had to deal with it, was in the hands of some successor, so that he really had no blame in the matter.

4619. But it was excluded?—It was excluded.

4620. Is not, roughly, the effect of it this, that where a tenant is determined to get his holding under the Land Act, and he is excluded by sub-letting, he simply puts the labourers out and drives them into the towns?—There are cases of getting rid of sub-lettings; how far it may impose a hardship upon the sub-tenants, or where they go, I do not know, but I have known cases of that kind.

4621. Then as to the presumption for improvements: do you think that that is the main difficulty the tenants have as regards improvements?—The presumption and the proof; I think the furnishing of legal evidence is a great difficulty in the way of the tenants.

4622. Of course, we have it that in all Ulster custom holdings, that is, where the custom is proved, the presumption is in favour of the tenants?—Yes, but I fear in practice it does not relieve them much. This is an Ulster book, and is as full of evidence from Ulster as if from Mayo; I have been in Mayo and in every county round.

4623. I will come to the proof in a moment, the presumption is in his favour?—The presumption is in his favour in law.

4624. How do you think the question of proof comes in; will you explain to the Committee how the question of proof affects the tenant, is he not able to prove the improvements?—In many cases he is able, but in many cases he is not able to prove them all; and in some cases he can prove none of them.

4625. Then it is your opinion that that is the chief difficulty as regards improvements that the tenant has to meet, the question of presumption and proof?—Yes.

4626. If that were altered, do you think the other

Mr. *T. W. Russell*—continued.

other difficulties are serious?—I think there is no difficulty that can be remedied that remains. I think that improvements so rapidly get covered up (Nature covers over the new), that of course the improvements (many of them), in a short time will become undiscoverable, either by the evidence of the sons of the tenants, or any other evidence, and they must go; but I think as far as the practice of the Land Commission goes, that the requiring of the tenant to give technical legal evidence of improvements, often deprives him of some of them.

4627. Then just let me ask you this? Would you make the presumption first of all in his favour; do you believe that the improvements generally in Ireland have been made by the tenant?—Oh, yes; I should say so.

4628. Then would you alter the law as to presumption, and make it the same all over Ireland, as it is in Ulster custom holdings; I am taking presumption, first?—I think I would; it must be one side or the other, and I think there is far less injustice in that than in the other.

4629. As to the proof, is it the case that unless the tenant enumerates the improvements on the originating notice, you cannot allow for them, except by consent?—There are many estates managed in a generous way, where the agent, if satisfied that they have been omitted from the schedule, has allowed them to be added. I have known many cases of that kind, but I have also known many where the tenants were held strictly to the proof.

4630. Have you any suggestion to make as to that?—The one I have made would, I think, cover that; that is about letting the improvements go to the Sub-Commissioners, and that when the tenants show the improvements on the land they should be satisfied with that.

4631. Has the increased cost of labour impressed you much in rent fixing of late?—It has impressed me much; I have had to turn tillage land which was no longer possible into grazing land, as far as I could.

4632. Was that in consequence of the cost or the scarcity of labour?—Personally I have not found any difficulty about the scarcity, but I know that many farmers, especially in County Down and particularly near Belfast, complain largely about the scarcity of labour.

Mr. *Dillon.*

4633. You have some practical experience of farming yourself?—Yes.

4634. Have you much; do you farm much land?—At present I have two holdings, 105 and about 40; about 150 acres, I suppose.

4635. Have you found it a profitable employment of late?—No, certainly not.

4636. What county do you farm in?—Donegal.

Mr. *Sexton.*

4637. Have you had a fair rent fixed on your holdings?—The larger one I bought under the purchase clauses of the Land Act of 1870, "The Bright Clauses" they were called then.

4638. What about the other one?—On the other one I got a rent fixed, not in the court; the agent happened to have been an Assistant Commissioner; I was a brother Assistant Commissioner, and I suppose he thought that I would only want what was fair as we were bound to believe in each other.

Mr. *Sexton*—continued.

4639. The circumstances were favourable to the tenant?—Yes.

4640. What did you get off the old rent?—I got 30 per cent., nearly a third; as close as I can remember now it was about a third, about 30 per cent.

Mr. *Dillon.*

4641. You stated that in fixing a fair rent you gave effect to the prices of agricultural produce?—Yes.

4642. You had the prices in your mind when fixing the rent?—Yes; but I would like to say that I consider every person experienced in farming, and feeling the pinches of it, must necessarily think of prices. He has the prices, as he has the knowledge of the uncertainty of the Irish climate, or any other fact, always present to his mind, as anybody must have who is dealing much with the matter. I consider that the returns of prices that are published are useful in that general way, to show the tendency of prices and whether there is any slight improvement, or whether they are still going the wrong way.

4643. But you did not fix on the regular scale; I mean to say, you did not have a regular scale calculated when fixing the rent?—No. Do you mean first to determine the produce of the farm, and then to apply the scale of prices to it?

4644. No; what I meant was this; whether you had any special scale of the prices of agricultural produce in Ireland for use in fixing the rent of farms, or as one element in fixing the rents?—I have had that very much before my mind, for this reason, that the schedule of prices that is published (I suppose by the authority of the Act of Parliament in connection with Griffith's valuation) happens to be an unusually low range of prices, and I think every one looked (at least, I did) at those prices with great interest. They were very low, I should say, when they were fixed in 1852. They dropped in 1852, and they became stereotyped in Griffith's scale, then they go up almost immediately.

4645. Did not they rise to a very high figure?—About 1856. About the time of the Crimean war; we saw the highest, or a very high figure.

4646. You said that in fixing fair rents in 1881 and 1882, you were at the end of a period of good years, and that was in all your minds; that was your evidence last time?—Yes; I think for 25 years from the Crimean war, from 1853, say, to 1878, there was a period of steady rise, with little variations, prices were always rising.

4647. That was in your mind when fixing rents from 1881 to 1885, was it?—It was, in the sense I have already explained.

4648. That is to say, in making plots for 15 years you gave full effect to that?—Certainly; I think we were bound to do that.

4649. One other question I want to ask you about prices; I think you said that in a general way

Mr. *Dillon*—continued.

way you took into consideration the prices for 15 years previously, having regard to the term for which you were fixing them?—Yes; at that time I think it would be quite 15 years, as there had not been much of a change.

4650. I am speaking now of what you actually did in 1881, 1882, 1883 and 1884; you took into consideration the prices for 15 years?—Certainly.

4651. Have you any estimate in your own mind of what the average fall of prices in the last five years is, as compared with the 15 years previous to 1881, in a rough way?—I would say that store cattle has fallen 30 per cent. in this time.

4652. Store cattle is a very important element in fixing Irish rents, is it not?—I think it is the most important item of produce.

4653. Would you not say it was the most important, particularly in the western counties, about Mayo and Donegal?—I think it is there perhaps more; but still, even in the north or any tillage district, where grain has fallen so much consumed on the holding and by the people that the tenant there is largely a consumer, as he is in the west, with regard to that item of produce; and I think the great difficulty, especially to the western tenant, is the drop in the price of his little beast, or the two little beasts, that he has to sell every year.

4654. There has been a drop of 30 per cent. in store cattle compared with the prices you had in your mind from 1881 to 1885. Has there been any drop in the cost of production all round, the labour bill and the general outgoings of the farms in Ireland; has there been any drop?—No, I should say not.

4655. Has there been an increase?—Very little in that period, but there has been an increase I think.

4656. I mean since 1881, there has been no decrease in wages?—No, certainly not.

4657. Could you form any estimate of what sort of an effect on the profits of a farm the loss of 30 per cent. would have supposing produce to be the same; that must be the supposition that the gross produce remains about the same?—Yes.

4658. What would be the result on the profits of the farm, in a rough way, of a loss of 30 per cent. in the prices that you have to sell at, with no corresponding drop in the prices of production?—If that applied to the whole produce, I consider that would wipe out rent altogether; but while cattle probably is the most important item, it would only represent 30 per cent. of the gross produce probably.

4659. What I want to bring out is not whether it would wipe out rent; that would depend, I suppose, a good deal on the nature of the farming and the soil, but would it affect your net profit by 30 per cent. or a great deal more than 30 per cent.?—I am quite familiar with the very interesting balance sheets that are made. If the outgoings come to within 20 per cent. or 30 per cent. of the gross produce, some people think you should give the landlord a third, a fourth, or a fifth, according to their view; and if a drop of 30 per cent. on the whole takes place, of course when that is applied to the surplus it multiplies the percentage by 3, 4 or 5.

Mr. *Dillon*—continued.

4660. That is what I want to bring out; you are speaking now as a practical farmer; the decrease in the price would be considerably multiplied; I do not want to bind you to a figure?—Yes.

4661. It is considerably multiplied when you come to determine it as applying to the net profit of the farm?—It would undoubtedly. If his gross produce is 100*l.*, and you give the landlord a fifth, that is 20*l.*, and a drop of 30 per cent. wipes out that surplus; but then I think it ought to be remembered that the tenant is largely a consumer, and that he gets a benefit as a consumer on all the articles that he consumes; flour, for instance.

4662. He does not consume store cattle?—No, that is why I put the store cattle as probably the principal thing. Where he produces milk he is a consumer of that. There are other items of importance I should like to mention. In pork, which is a very constant factor, there has been much less of a drop say 11 to 15 per cent., while butter has only dropped about 8 per cent., which is also a considerable factor; but the great difficulty of applying scales of prices and drops was very strongly borne in upon me at the time I was scrutineering about judicial rents under the Act of 1887.

4663. As an Appeal Court Valuer, as I understand you, you go on the land; you are not bound as to allowing improvements by the decisions of the court below?—I am bound as to the quantity.

4664. That is exactly what I want to come at. As regards any definite improvement on the land, are you bound by the decision of the court below whether that belongs to tenant or landlord?—Yes.

4665. You are?—Yes.

4666. I rather thought the opposite from your evidence just now; that is what I want to clear up. You are not allowed to question, or reverse, or give your opinion as regards the ownership of an improvement on the land?—No, certainly not.

4667. You are bound by the court below?—Yes.

Mr. *Sexton.*

4668. Is that your copy field book that you have there?—It is a field book, but I would rather give you what I took out of it, because it is very unintelligible to anyone but myself.

4669. I only ask, is it a copy of your field book?—Yes.

4670. A copy of your field book in use?—Yes, it is actually one I used.

4671. When was the field book instituted?—The field book was instituted near the start. My first experience was to arrive on the land without anything; I had to buy one in a shop, but the Land Commission supplied them very shortly after.

4672. You enter in every case the rent and the exemption made to the tenant in respect of his improvements?—Certainly.

4673. We have been told that some Assistant Commissioners enter that amount also in the pink report; are you one of them?—I think not invariably;

Mr. *Sexton*—continued.

invariably; I always enter the description and extent.

4674. Yes, of course you are bound to do that?—Yes, but not the price; the value that I attribute to it, or attach to it.

4675. Now do you see any objection, especially in cases where a party desires to appeal, to giving to him the elements of your decision as well as the simple amount of fair rent. I mean do you see any objection to telling him at what you fix the full letting value, and what amount you allow off for improvements as well as the fair rent?—I would personally have no objection, but the "full letting value" would include, would it not, the tenant's buildings, his unexhausted manures.

4676. No; the full letting value would not include the tenant's buildings; you ignore them?—The full letting value of the holding would include the tenant's buildings.

4677. You value the holding without the buildings?—If the buildings are the tenants', we do not value them.

4678. Tenants' buildings you ignore?—Yes.

4679. Therefore the full letting value there would not include the buildings?—I think it would; that is, prior to the deduction for improvements.

4680. No; I understand the practice to be that you value the holding first without the buildings?—Yes; we value the land, but "full value" of the holding would include buildings.

4681. Do you value the holding first without the buildings?—No, not the holding; we value the land.

4682. You value the land without the buildings?—Yes. I do not say, "first." Are you speaking of a case where the buildings are the tenant's?

4683. No; we understand whether they are the tenant's or the landlord's; the land is first valued separately without the buildings?—If the buildings were the landlords, those I would value first before we started out on the land; that is a matter that is quite unimportant.

4684. You have separate factors, at any rate, for the valuation?—Yes; the same as we have separate fields; we never value them in lumps; we follow from one field to another field, and from one house to another house.

4685. With a view to enable each party to direct his evidence to the point he considers necessary on the hearing, do you see any objection to letting him know the value of the buildings, the amount you have taken off for buildings and improvements, as well as the amount of the fair rent?—I think it would increase the work immensely, and that it would not have a compensating advantage to the tenant, I would have no personal objection myself; if you give me time, so as to let me value everything to the best of my ability; to give that, and to let the parties make the best they could of it. Take County Down: it would be almost as difficult to value the buildings belonging to the tenant as it would be to value the land on which we wanted to fix the rent; the inquisition would be about a matter that would not affect the result.

4686. I submit to you, that when the buildings belonged to the tenant, it would be necessary to make an entry?—If they belong to the tenant, you put no value upon them, and if you put on the farm the full letting value, that would mislead, because the full letting value would include the value of the buildings.

4687. Call it the full letting value of the land?—Yes, that would do.

4688. Now, in the case of the Ulster custom; I understand the Ulster custom tenant in regard to improvements, has the presumption on his his side, and that it is taken, in the absence of evidence to the contrary, that the improvements belong to him?—I heard the evidence about that; my experience has been different; I do not remember that ever a tenant got himself passed over in that way; I think he is always put to prove that he made them except as to buildings.

4689. He is put upon proof that he made them?—Yes.

Mr. *Macartney.*

4690. In Ulster?—In Ulster.

Mr. *Sexton.*

4691. Surely, if he has the presumption on his side, the meaning of "presumption" is, that they belong to him, unless there is real proof to the contrary. Do you really put the Ulster custom tenant upon his proof?—Certainly; there are 60 Ulster cases, and they are in this book exactly as if they were 60 cases in Mayo, as far as proof is concerned, except as to buildings which I call equipments.

4692. I should have thought that the direction of the Statute was very plain?—As was stated the other day, he would have to prove the custom; the custom would be as hard to prove as the improvements themselves.

4693. Proof of the custom is one thing. Assuming proof of the custom, then, custom being proved, I understand the improvements found to exist on the farm, are found to exist on the farm, and are presumed to belong to the tenant, unless proved to the contrary?—As a matter of practice, I never saw the custom proved. If the tenant started to prove custom, he would, in many cases, be surrounded with more difficulties, in my view, than he would be in proving the tangible improvements he had made.

4694. He does not prove the custom?—I never knew him prove the custom. In the case of buildings, and no lease affecting it, the landlord would be asked, Did he admit buildings to be the tenant's? He would probably say he did, I suppose in deference to the custom, and to save any further trouble about it; but as regards drains, reclamation, and all other improvements the tenant would be on his proof.

4695. There are such important legal considerations hanging upon the custom, namely, presumption as to improvements, presumption as to ownership, and specified value and true value, that surely there must be some mode in which the Court satisfies it; will you tell me, please, what it is?—The question of specified value is not started in Ulster.

4696. Not under the custom?—No.

4697. That creates all the more necessity for claiming

Mr. *Sexton*—continued.

claiming custom, otherwise the landlord might claim to have the specified value fixed?—I have known it claimed, but abandoned. I have known one or two cases. They are mostly advised by lawyers, and they know that there is no use in serving that notice; and with two exceptions, I never knew an application made by the landlord to fix specified value. I have known a good many cases of fixing the true value, which is a different matter altogether.

4698. "True value" is fixed when the tenant is going out, is it not?—I should say so; when the tenant proposes to sell.

4699. "True value" has no application to fixing fair rent?—Neither has "specified value."

4700. The landlord could equally claim to fix specified value if the farm is a non-custom farm?—Yes.

4701. Are there not "non-custom," as well as "custom" farms in Ulster?—There are, I should say, but I never saw any such cases tried. I never heard of any application being successful in Ulster.

4702. Do I understand you to say that in Ulster, within the province anywhere, a farm is presumed to be a custom farm?—Not absolutely, but that is a very general presumption. I think a landlord would have considerable difficulty in getting out of the custom if he tried to get a specified value fixed. I am not a lawyer, but I suspect that anyone serving a notice would be bound to put himself first under the Act, and I should say he would have great difficulty, in almost any part of Ulster, in showing that, unless he could show that he had taken up the farm; if he had evicted or bought out a previous tenant he could show that at once, and there would be no dispute.

4703. Do I understand that, in Ulster, you presume the custom to exist unless the contrary is proved?—I think that would be the practice if the landlord applied to have a specified value fixed; but I really have no experience except that ever a landlord did apply in as stated, a case where the Ulster custom did exist; nor do I remember that ever a landlord persisted in Ulster in trying to prove the non-existence of the custom, in order to get specified value fixed.

4704. There is "custom" improvements; if the custom does not exist the landlord is entitled to apply to the Court under Section 4 of the Act of 1870 to have taken into consideration the time that the tenant has enjoyed the improvements, the rent at which the holding has been held, and any benefits he may have conferred upon the tenant in consideration of the improvements so made; he would not be entitled to prove in any of those cases if the custom existed, therefore, it is vital to know whether the custom exists or not; how do you know it?—In the application and in the working of it I have seen no difficulty; I do not see where the difficulty comes in in the practice of the Court.

4705. At any rate, whether an Ulster custom holding or not, the apportionment of the improvements is proceeded with in the same way; that is, the apportionment of the letting value of the improvement; it makes no difference whether the farm is a "custom" farm or not, so far as concerns the apportionment of the improvements between tenant and landlord?—I should say, in 95 cases out of a hundred it would have no importance at all.

4706. It may extend to difference of amount; there would be no difference of treatment, whether it were a "custom" farm or not?—I think not, in 95 per cent. of the cases.

4707. Would there be any difference at all?—I know the questions in Adams *v.* Dunseath; something might arise about the buildings, but in practice, I have no recollection that I was ever asked to give, or that any Commission was ever asked to give any different apportionment of the letting value in Ulster to what they did in Connaught.

4708. Now, about the statutory farm; I understand it to be admitted that the rents fixed from the passing of the Act up to 1886, are too high now?—I think they are.

4709. Now take the rents fixed in 1885 if the present statutory term holds, these tenants will not be entitled to have their rents revised until the end of this century, the year 1900?—I suppose that is so.

4710. I understood you to say, however, that in recent years the value of store cattle has fallen 30 per cent.?—Yes.

4711. What would you say is the average proportion in an agricultural holding in Ireland, of the cost of production to the value of the production, to the value of the produce, in general figures?—I think it would be impossible to give a third, or even a fourth of the produce of tillage lands for rent.

4711*. I am speaking now of cost of production, not of rent; what part of the produce does it cost the tenant to produce it, upon the average, in a general way; or give me two figures between which you think it would vary, apart from the rent?—I do not think I could give you that. I think the cost is very substantially represented by the other four-fifths that I have spoken of.

4712. What four-fifths have you spoken of?—Four-fifths of the produce. To produce a hundred pounds, probably 80*l.* of it ought to be regarded as the cost of production, including in that cost of production the labour, and a reasonable, or a very moderate payment to the tenant himself, for his own supervision and his own labour; and in the case of the small farms, he is practically a labourer.

4713. What I am anxious to get you to do is, to exclude the element of remuneration to the tenant, and to give me, if you please, the proportion between what it costs the tenant to bring out the produce, and what he gets for the produce, and if you like, add the rent, put all the outgoings together, and compare that with the total value of the produce in a general way to which I do not wish to bind you at all, as any mathematical matter?—I think my answer is, in a general way, this: in the case of a small farmer paying 20*l.* rent, I would never think of giving to him the salary of a trained steward. I do not think he could get it in the work of land at present; and therefore, when I speak of some reasonable or moderate reward or return for his supervision, I think that is a necessary part of the cost.

Mr. *Sexton*—continued.

4714. I would ask you, however, to exclude it; I would ask you to consider only the rent, and what the tenant has to pay for producing the produce, leaving upon the other side, any question of remuneration to him, taking the rent simply, and the outgoings of the tenant upon the one hand?—Well, you know perfectly, perhaps better than I do, that in the vast majority of cases the tenant is his own labourer, and his family assist him; he never pays anything, in the sense of actually paying it, in the cost of these improvements we are talking about, the 5*l.* expended on an acre; that 5*l.* has never been expended in the sense of paying wages in the small holdings, the tenant himself, and his family are working always on it, and they do not pay wages, as a matter of fact.

4715. Very well, I am satisfied to take it so: I am satisfied to treat the surplus as their means of living, and that is what I want to get at: I want you to tell me what proportion of the produce taken upon an Irish agricultural holding goes as rent, and as outgoings for seed and manure—and, if labour is employed for labour—exclude, and leave upon the other side, the labour of the tenant and his family?—I could not answer that. I do not think I have ever analysed it, or cut it up in that way. I have farmed myself, and, in a way, my experience ought to have enabled me to answer that as well as anybody; for instance, since I have been on the Commission I have carried on a farm and dealt with the produce and kept an account of it, as I do about anything else; but I could not separate the results so as to answer your question upon that.

4716. What proportion of produce is left for the tenant to live upon?—I think there is no practice that would enable anyone to answer that question; there are thousands, or hundreds of thousands of the holdings on which rents are fixed, where such an analysis could not be made.

4717. Leave out those; you revel in exceptions; take the ordinary case, where the tenant lives on the farm, and tell me how much of the produce is left to him to live upon, or something near it?—I have never gone into that calculation. If you even gave me the size of the farm, and the rent of it, and the valuation of it, I doubt very much if I could arrive at that; and so far as that being a matter of knowledge with any person skilled in the matter of land, I think it has never been successfully attempted to be done. The very highest authority I know of in Ireland, Judge Longfield, has declared that there is no fixed proportion between rent and produce, and no living man could determine it even if he had the facts before him.

4718. I have not asked you to fix the proportion. but to give me some general idea from your experience; what do you have left for yourself on your farm, after paying outgoings and rent, what part of the produce is left?—I think my own farm would show that I had nothing at all left latterly. Under the Bright Clauses, we had to pay a third in cash, and 5 per cent. for the other two-thirds. I bought at 26¼ years' purchase; and you may suppose from that that I have not much surplus left.

Mr. *Sexton*—continued.

4719. We have been told here that in England, it is certainly one-fifth of the produce, and in Ireland, one-third; what do you say to that?—I do not think in Ireland it is a third; in tillage holdings, I am perfectly satisfied that would be quite impossible.

Chairman.

4720. Do you say that it is impossible that it should be so high as a third?—I should say so.

Mr. *Sexton.*

4721. Would you say a fourth?—I would rather say a fifth, or even less than that, according to my own experience of the gross produce.

4722. Yes, I mean of the gross produce?—Yes.

4723. Would the tenant in the ordinary case in Ireland have more than one-third of the value of the produce left after paying everything; after paying the landlord, after paying the merchant, after paying everyone. Mind you, in fixing a fair rent you fix it at what you think a reasonable person would give for it from year to year; and of course you fix it on what you think a reasonable person would have left after making those payments; the thing cannot be so strange; every valuer must have it in his mind. I submit that you cannot decide what a reasonable man would give for a farm unless you formed some idea of what that reasonable man would have left after he had paid out the outgoings?—Well, I will not contest your view of what is reasonable; but still I think that every valuer I have ever seen or known has gone on the lines of his own experience of what the reasonable rent would be to a man likely to remain solvent if he worked the farm fairly.

4724. And that he would have a certain surplus?—Do you mean a surplus to put into the bank, or what?

4725. No, to live upon?—It comes to that.

4726. It does no doubt?—It come to that; but as to how much it is, one man would live where another man would starve, and you must fix it pretty much on an average.

4727. What is the least you would allow him?—I would not like to begin on that method; I never have worked on that; I think it would be very unsafe. I have known many, cases of valuers who have come up before the Court and proceeded on those lines, especially in the early years of working the Land Act; but they invariably broke down on cross-examiniation; they had made balance sheets but they were cooked, and made without any real experience or any close relation to the fact. When they came into the box and committed themselves to some particulars, amount of produce acre per acre and what price they put upon it, and what was the cost of outgoings, and deducted one from the other, and made the rent and put it in, I never knew one of them to stand cross-examination for five minutes.

4728. You do not like to say, apparently, what you think the proportion is between rent and produce, or the proportion between cost of production and produce, or what proportion you think is likely to be left after the tenant has paid his liabilities; you will not commit yourself to any

Mr. *Sexton*—continued.

any kind of proportion?—I hinted at the proportion of a fifth or a sixth; but if I am not wearisome to you I will tell you my own case and the case of my neighbour.

4729. What I want is something general?—It is a specimen of that district that I propose to give you, if you will have it.

4730. No; I do not think it would help me much?—Very well.

4731. Let me put this to you: assuming the rent to be one-fifth, adding to it the cost of production, I ask you whether a fall of 30 per cent. in prices would probably swallow up the surplus?—I think it would.

4732. It would?—Yes; but then that is qualified by what I said before as to a fall of 30 per cent. in one item of produce, where there are perhaps 20. When the Land Commission were trying to get a basis, they took 20 items of farm produce. They asked the scrutineer to state the percentage of value of each of those 20 items, pork, beef, mutton, oats, barley, young cattle, and so on; and when we come to look at the rise or fall in any one of these, we must limit its effect as a factor by its proportion in the whole.

4733. Those tenants who had their fair rents fixed in 1885, and have suffered a fall of 20 or 30 per cent. since that time in prices, have had their means of living vastly diminished, have they not?—Certainly; I should say so.

4734. Would you say that Parliament would do well to apply the reduction of the statutory term to the cases of those tenants who had their rents fixed up to 1885; that is to say, shorten the existing statutory term in order to save the tenants that loss?—It is a very grave question, but I certainly think the state of agriculture now, especially in Ireland; perhaps in England also, so far as I can see, but speaking of our own country alone, is such, that I think it would be proper to shorten the term.

4735. May I ask you whether you see any reason for compelling the non-custom tenant to have a specified value fixed, or a true value fixed, and to deny to him the right which the custom tenant in Ulster has, of getting the best price for his tenancy?—I have no hesitation in saying that I would recommend the fixing of the specified value to be done away with.

4736. The true value?—The true value is slightly different.

4737. Somewhat?—Yes.

4738. Would you deny him the right the Ulster tenant has of quitting his holding on the land, and selling it for the best price he could get?—No, not unless it were some very exceptional case, such as a holding near a demesne, or a home farm, or some case which a court might take into account. I have known the whole of the cases on an estate, numbering, I think, five-and-twenty, to have attached to every application to fix a fair rent an application by the landlord to fix a specified value; and the impression produced upon the court there was, that that could only mean that the landlord never meant to take up all those farms; and it was calculated if these tenants did not sell their farms immediately, but thought of selling them,

Mr. *Sexton*—continued.

to stop all improvement if the price were fixed The Chairman of the Commission then called upon the landlord to produce evidence to go upon, and he said he was prepared with no evidence. The Commission then consulted, and declined to fix any specified value, and the applications went out.

4739. We have been told here that this "specified" and "true" value, so important to the tenant as disposing of everything he has in the world, are fixed by "a shot," "a guess," or by "rule of thumb;" would it not be very much better that the value should be ascertained in the ordinary way by public sale?—I think so. I would like to object to "rule of thumb," and to "shot." I have in that book a case in Tyrone, where the true value was applied for; we had the evidence of witnesses, we cross-questioned them, we compared what was said on each side, we went and looked at the holding, and the tenant's improvements, and any buildings he had, and we dealt with that case as anxiously and carefully as we deal with anything else, and there was no "shot," no "rule of thumb," or any laxity about it.

4740. You know that this statute has confided discretion to the Land Commission, and the Land Commission, it appears, has left the "discretion" to everybody else, so that there is great difference in practice, a result at which we cannot be surprised. I want to direct your attention for a moment to the limited scope of the Land Act. There have been about 300,000 fair rents fixed in the past, and I find from Thom's Directory that there are 486,000 or 468,000 agricultural holdings in Ireland?—Yes.

4741. Now I direct your attention to that very important matter, more than one-third of the agricultural holdings in Ireland are still outside the court; does that arise in any great degree from influences acting on the minds of tenants who are legally entitled to come in?—In the west, I think it does. I have heard so much in Mayo, Sligo, and amongst very poor tenants. Where we would be working over the countryside, we would find here and there a holding was not in, and it turned out that the man was behind with his rent, or out at elbows, or that he was afraid of being called upon for arrears. Another very common thing we have found is that the poor people could not really get up the costs necessary. Solicitors, looking, properly enough, at their own interest, decline to start them until they get some security or some payment. Of course, those were rare cases; but I do think that the cost of the procedure and the fear of the results if they came into strained relations with the agent or anybody connected with the estate, especially in the west, would, and did, affect many. I fancy a great many of this hundred thousand, or whatever the balance may be, would not be cases of that kind.

4742. The number is 168,000 apparently?—I fancy a great many of them have got some temporary arrangement or reduction. I suppose, too, that includes a large number of those which in the returns are "struck out or withdrawn."

4743. I suppose you know that the agreements out of court have been less than those come to

Mr. *Sexton*—continued.

in court?—I think that would be generally the case.

4744. Would that suggest to you that the people who agreed out of court were not so free to guard themselves as those that came in?—In some cases; and in some cases they thought they were saving cost and delays, and appeals, and all the rest of it, which attend the fixing of a rent; a very irksome risk in a great many cases.

Chairman.

4745. Do you think the effect of fixing the judicial rent is to make the landlords in the district concerned lower their rents in the cases in which they are not fixed in court?—I think so, decidedly.

4746. You think the average level of rent in a district is materially affected by the level of judicial rents?—I have known of many cases where they took advantage of what had been done by the Land Commission, and came to terms on the rest of the estate, and got settlements very largely made.

Mr. *Sexton.*

4747. Do you think it would further the intention of Parliament if the court had power, in fixing the fair rent, to deal with arrears, as in Scotland?—I think it would.

4748. Do you think it would promote the intention of Parliament if the court had power in relation to turbary, where turbary existed anywhere upon the estate, though not upon the particular holding, to take cognisance of the turbary, and to deal with the question or right of the tenant in regard to it, as an element or right of the rent?—Certainly, I think that ought to be done.

4749. It would end a great social trouble, would it not?—It would, I believe.

4750. What would you say is the average cost of an appeal to the parties. Although you do not like to make average statements, kindly give me some impression of what you think an appeal costs the parties, an ordinary appeal?—In the case of a tenant whose rent ran between 20*l.* and 40*l.*, I suspect strongly from 2*l.* to 3*l.*

4751. Including not only the cash payment to the solicitor and valuer, but the cost of travelling, the costs of witnesses going to and fro, and the total outgoings; take both the parties, landlord and tenant?—The tenant will travel all night, or walk on his feet; he will not spend much in travelling. I do not like to give you averages, and especially about a matter that does not come before me, except on mere hearsay, and what may be talked about as one goes about from place to place. They nearly always like to have up a valuer again, and he charges them something, and of course the solicitor must charge them something, and there is the risk of their not being heard the first day they come, and of having to come a second day. I think, if that could be avoided, it would be a good thing.

4752. Would it not be a very moderate estimate to say, taking the costs of the landlord and the costs of the tenant together, that there is

Mr. *Sexton*—continued.

nothing likely to be left out of a 10*l.* note when the appeal is over?—I should think that is very probable.

4753. How many appeals have there been, 40,000?—I think there have been more than that; I am not sure. I suppose the report of the Land Commission is in your hand, and that will give the number.

4754. We may take it that those appeals have cost something like half-a-million, and have resulted in producing a net increase on the average of a halfpenny in the rent?—I avoid the averages.

4755. We have had it in evidence that the net increase is 0·2*d.*; would you agree with that?—As to the average, I do not know.

4756. Well, if there have been 40,000 appeals, and the average cost has been 10*l.* each, that would be 400,000*l.*, and the halfpenny added to the rent would produce about 10,000*l.* a year; do not you think the article rather dear at the price?—I think it is; but, if I were a very interested party, and very hot about it, I would be willing enough to pay my own share rather than submit; but I do think it would be very well if there could be a fair way found of avoiding it. Either of the parties would lose but little supposing the Land Commission Courts to make mistakes (as they no doubt do) in giving a little too high or a little too low, I think it would be better to submit.

4757. Are you referring to appeals?—Yes; but I would always have the right to appeal on law points.

4758. On the question of law?—On the question of law, yes.

4759. You would have two valuers go on the land wherever the parties agreed that a fair rent ought to be fixed, and agreed on the improvements generally, and would consent to improvements upon the land?—Yes; whether they agreed or not.

4760. But the parties could proceed if they liked?—Certainly; but on the applicrtion of either I would have a valuer go on the land.

4761. Or they could stop if they liked, so far as the valuers are concerned?—I would have them fixed; and I would also say, if you will allow me, that I would do away with the limit of improvements to 20 years, or anything of that kind. I would define improvements as works which contribute at present to the letting value of the holding, that their value is what they are at present contributing to the letting value of holding, I would free matters of that kind as much as possible from controversies or distinctions of a legal kind.

4762. Looking to the manifest purpose of Parliament in passing these Acts, would you endeavour, upon the whole, to free the administration of the law from technicality and to enable people to understand where they stood?—I would, indeed; I never could see why there should be any difficulty in a case of this kind; if the rent was fair, such as the holding on economic principles should produce, I never could see why, if John Murphy (who has been working it for three years) comes in to get it fixed against Peter Robinson (or whoever may be the landlord)

Mr. *Sexton*—continued.

lord), and it turns out that, instead of John being the tenant, it was Pat Murphy who was the real man, there should be any difficulty created by that fact. I would make it final if the Land Commission fixed the rent; I would declare that everything with regard to the status was unprejudiced, and if anybody felt aggrieved, and said that Pat was the right man, I would let John come and assert himself before Assize court. I would make those courts the only places for investigating things of that kind, and not let them come before the Land Courts.

4763. Do you feel that there is probable danger that a present tenancy (to which the Act applies) may be killed, or of its being killed by one legal technicality or another of that character, such as ejectment for the non-payment of rent by the middleman destroying the tenancy of the tenant under him, because some statutory condition has been broken, although the landlord gets a contribution out of the purchase-money? Do not you think Parliament would do well to make some general rule of law which would guard against the destruction of present tenancies (to which the Act applies), by the operation of such rules of law as those I have referred to?—If such a danger exists (which is evidently a matter for lawyers to determine), I would think it would be well. Then, I think, if the hint that I gave, that the Land Commission had power to fix a rent on the holding, no matter what technical legal disability might affect the parties, were acted upon the motive for disturbing or questioning it would have disappeared. If the rent fixed is all that could properly be got out of it, no matter whose hands it is in or who has to be paid, the motive would be gone to a large extent for litigation.

4764. You would not allow the death of a limited owner, or the ejectment of a middleman, or the fact that a statutory condition had been broken by a tenant when the purchaser came in; you would not allow any of these things to operate to destroy a fair rent?—The rent ought to be out of the holding and indisputable, whoever has the right to receive it.

4765. You are in favour of the impregnability of a fair rent?—Yes.

4766. Here being an acknowledged 470,000 holdings, 300,000 only having had rents fixed, 170,000 others being left without fair rents, do not you consider that it is incumbent upon Parliament to endeavour to bring in as many of those 170,000 as can be brought in?—I think, unless the economic conditions alter, anything that Parliament can do to free agriculture and encourage the tenant to lay out his money and make improvements, and do anything else that ought to be done, ought to be the object of Parliament. I think the condition of agriculture through the country is very grave, unless prices alter; of course, if prices go up again, we can cover over a lot of little defects, and bear them smilingly; but if it becomes a matter of life and death as to whether agriculture can be carried on, I think it is too hard if it is also embarrassed by legal matters. Everybody seems to admit that a fair rent ought to be fixed, and therefore I do not see why it should not be fixed.

Mr. *Sexton*—continued.

4767. You know that a great deal of somewhat difficult learning has been woven about these questions of legal exclusions, for instance, sub-letting, what is a non-agricultural holding, whether the holding has a mill upon it, or whether it has a rood of demesne land upon it, right of tolls, town parks, or whether the place is a town, whether there is accommodation value, or value from proximity to a town, whether the man lives in the town or whether he does not; questions of demesne lands, and so on: would you be in favour of some general rules of law which would generally insure to a tenant of a holding in Ireland who uses it for agriculture, for profit, the right to have a fair rent fixed, and a statutory term fixed?—I would; I think that that mill holding of Boyle *v.* Foster is a striking case. Largely on my recommendation, I suppose, the Land Commission held it to be an agricultural holding; it had been fought through the Land Courts and the Court of Appeal decided against the tenant, and against the Land Commission, and in my opinion against what the facts pointed to; but after all this the landlord voluntarily gave substantially the same reduction and settled the matter with the tenant very much on the same lines as those that the Land Commission had fixed.

4768. After the lawyers had ousted the tenant the landlord did this as a matter of generosity?—That I understand. I have no evidence of it. I was greatly interested in the case. I was very much interested in how it worked out, but I was informed that, after the Court of Appeal upset the Land Commission, which in its turn upset the Sub-Commission, the landlord settled with the tenant approximately near the rent which we had fixed. It was a big holding of 105 acres of land (that was very important) and an old obsolete mill which on no commercial principles could ever be reinstated as a mill. The water power at the very best was only 12-horse power; and it was antiquated machinery that was only valuable as old metal.

4769. Just one illustration on the working of the law about improvements: If an improvement is held not to be suitable to a holding it is held to be no improvement at all; is not that so?—Yes, I believe that is so.

4770. And if the improvement is too good for the holding it is not an improvement?—That is so to the extent of what it exceeds the suitable.

4771. Do you know the case of John Robb?—No, but I know the case of Cooper *v.* O'Neill. In that case it rather favoured the tenant in the improvements he put up, which were far in excess of what the agricultural holding required. In place of putting 25*l.* for his buildings and improvements, we would have been probably putting on 50*l.*, if it had been suitable to the holding.

4772. In the case of John Robb, the unfortunate man, if I may call him so, built a house which the court held to be too good for the holding, whereas if it had not been too good for the holding he would have paid no rent in respect of it; but as the house was too good, he was obliged to pay rent for the house; is not that so?—I was

Mr. *Sexton*—continued.

—I was not in the case; you have it from somebody else who was.

4773. Now, finally, I understand from you that in your experience you have found that a fair allowance to the tenant to recoup him for his improvements has practically exhausted the letting value of the improvements?—That is my opinion with regard to the vast bulk of reclamation and drainage in Ireland.

4774. It does not apply to buildings, of course?—Oh no, buildings are a different thing.

4775. Different to reclamation and improvements?—Yes. In the first place, the reclamation and drainage are in the land and inextricable. The best expert that can be put upon it must only approximate according to his judgment and his experience as to how to disentangle the two. We go there 20 years after the land has been reclaimed. I have land myself that has been reclaimed, and I do not think there is a Sub-Commission that would give any improvement if I dropped off to-morrow, and my successor could not prove it in the box.

4776. But your experience shows, at any rate, that if the landlords generally claimed any part of the letting value of the improvements that would be inequitable; your experience shows that the letting value does no more than compensate the tenant for his outlay?—That is my opinion of the works of improvement in the land and on the land.

4777. Quite so, I mean that?—Building and equipment on the land are one thing; the other things are in the soil, and I am afraid they seldom last long enough to give a fair return; certainly not long enough to give an overflowing return.

4778. It is only where the improvements comply with the latent capacity of the soil that the proportion of the improvement comes in; is not that so?—Yes, but I think very rarely then.

Mr. *M'Cartan.*

4779. As to the Ulster custom, I understand the usage is for the Land Commission to presume in Ulster that the buildings belong to the tenant?—Yes.

4780. But require strict proof as to every other improvement made by him or his predecessor?—Certainly.

4781. And I believe to that rule there is no exception?—In the practice there is not.

4782. The requisition with them, on the part of the tenant, is to be the Ulster custom; the improvements are on the schedule?—Certainly; and if he does not have them on his schedule he has not complied with the rule and is not able to speak about them where his valuation is 10*l.* or above.

4783. And very often great injustice is done to the tenant because he cannot comply with that requirement as to strict legal proof, is it not?—I think so in many cases.

4784. You have had some experience as to town parks, have you not?—Yes, I have had some.

4785. And I believe there has been a glorious uncertainty in the law about that. You know Dundrum, do you not?—Yes, I have been there frequently.

Mr. *M'Cartan*—continued.

4786. The village of Dundrum. You have heard of the case of Savage *v.* Macan?—Yes.

4787. I believe the Sub-Commission in the case of Thomas Macan held Dundrum to be no town?—Yes; so I understand.

4788. And fixed a fair rent on his farm?—Yes.

4789. I should state that there was an appeal to the Chief Commission in Thomas Macan's case; is not that so?—Yes, so I see.

4790. And it was held to have been properly within the Act, and a fair rent was fixed; but then, in the case of Mrs. Macan and Mr. Savage, the Sub-Commission, following their previous decision, also fixed fair rents and the Chief Commission (who had decided that Dundrum was not a town in the case of Mr. Macan and Savage) decided that there it was a town; have you heard, or do you know, that this case of Mr. Savage and Mrs. Macan was further appealed to the Court of Appeal?—So I saw by the evidence that was given here.

4791. And that yesterday the Court of Appeal declared that the Chief Commission was wrong in its last decision, and the case was sent back to have a fair rent fixed; Dundrum was reduced to a village again?—I do not know about the decision.

4792. But you have fixed rents at Dundrum, have you not?—Oh, yes, I know Dundrum uncommonly well.

4793. You have also considerable experience as to mill holdings, I believe?—Yes.

4794. That you told us before; are you aware that in the 1887 Act there was a special provision made with regard to certain mills in Ulster, in Ireland?—I was not aware of that.

4795. Chiefly confined to Ulster, I believe; scutch mills?—I thought they were covered by the Act originally.

4796. I mean the 1881 Act; the 1881 Act says: "A flax scutching mill, otherwise suitable to the holding on which it is erected, shall not be deemed to be unsuitable to the holding on which it is erected by reason only that it is available for purposes beyond those of the holding on which it is suitable"?—Yes.

4797. That does not extend to corn mills?—No.

4798. And the flax mills are chiefly confined to Ulster, are they not?—Yes, largely: I never found flax mills anywhere else.

4799. There is required, in connection with the flax mills, as Mr. Russell mentioned to-day, houses for the labourers, the workmen?—Yes.

4800. And although the flax mills have been specially exempted under the Land Act, I understand the sub-letting of these houses has in a great many cases deprived owners of farms from the benefits of the Act?—Yes; I have seen that in the Reports.

4801. You have had no experience of that yourself?—No; I have had experience in connection with corn mills, but not scutch mills or buildings necessary to scutch mills.

4802. I understand your practice in the Land Court in Ulster is this: The first thing you do is when you have heard the evidence in the court to find out the gross rent?—Yes, that is from the value that is put up on the either side.

4803. And

Mr. *M'Cartan*—continued.

4803. And that is supposed to be rent of the farm as it then stands with all the improvements on it, except the houses?—Except the houses, and, of course, unexhausted manures. Valuing in that way I think they all exclude that in the original valuation.

4804. Is it not the practice when the valuer for the tenant comes into court that he is asked "How much is the gross rent"?—Certainly.

4805. There is not a word put there about unexhausted manures, is there?—There is not.

4806. It would be interesting, at all events?—It would be.

4807. The next thing you ask is what he considers a fair rent, is it not?—Yes.

4808. And the way that is arrived at, I understand, is by deducting the value of the improvements?—Yes, certainly.

4809. And is not that usually 5 per cent.?—It is. At any time that they have given us particulars of how they have arrived at it they always put down 5 per cent.

4810. They always put down 5 per cent. and no more on the cost?—On the cost of the work.

4811. But there is a great deal of cost, as you are aware, for which no allowance can be made; that is, that it has not increased the letting value?—Oh, in many cases.

4812. The tenants have to run great risks in expenditure before they do sometimes increase the letting value?—Yes, and sometimes when they do increase it the increase does not last long.

4813. And, I suppose, they rarely increase the letting value in proportion to the expenditure they make; or they would not if they had to pay for it, at all events?—That would be very often the case. In part of County Down, for instance, there are parts where the tenants have had great difficulties, both from the nature of the soil, and using their holdings for tillage; the ploughs knock on the stones, and they cannot work them.

4814. Take the case of the Kingdom of Mourne up along the mountains there, what would you consider the average value of land along that place before it is reclaimed?—You would have to say how far up the mountain you went.

4815. I believe the mountain runs down to the sea. You know the Kingdom of Mourne?—Yes I do.

4816. Outside Newcastle, land has been reclaimed; what would you say it would be worth an acre on the average before it was reclaimed?—I think that is a question that cannot be well answered unless you define. At the bottom, where the shelter is, and where the action of the water has brought down all the better parts of the soil, along the lower, the sheltered parts, it might, and probably would, be worth 5*s.* an acre, whereas going up to the barer parts exposed to the sea and everything, it might not be worth 5*d.* an acre.

4817. Say 5*d.* an acre. There cannot be worse than that immediately outside Newcastle?—Are you speaking about the Kilkeel side?

4818. Yes, the Kilkeel side?—Yes, I know it.

4819. Have you fixed any rent there above

Mr. *M'Cartan*—continued.

Newcastle?—I have fixed rents more towards Annalong.

4820. That is from it?—In the village of Annalong I fixed rent which was afterwards subject to contest.

4821. Have you fixed any on this particular land worth not more than 5*d.* an acre?—Yes, I have in many cases.

4822. How much per acre have you fixed upon it?—If I thought it worth 5*d.* an acre I would put 5*d.* on it.

4823. Did you ever fix land at 5*d.* an acre up there?—Do you mean have I applied that to the whole holding?

4824. Yes?—No, I have not.

4825. There are holdings there that are all of the same class?—I have fixed rents where the aggregate rent would not amount to 5*d.* an acre on a mountain holding.

Colonel *Waring.*

4826. Are you aware that there is a good water supply on top of Slievedonagh?—I have been on top of Slievedonagh and tasted the water.

Mr. *M'Cartan.*

4827. I suppose you are aware that the landlord never contributed anything to improvements in that part of the country?—Lord Kilmorey and Lord Annesley both had rents fixed on their estates, and I do not think they ever claimed any improvements, to the best of my recollection.

4828. Another very important question in this part of the country is the seaweed question; like turbary, you cannot fix a fair rent on the seaweed, I believe, without the consent of the landlord?—No, I believe that is the case. It has been the subject of a good deal of contention, and of a lawsuit too, I think; but the result was that we could not include it.

4829. You could not include it?—No, I think not.

4830. But when the landlord consents to let the tenant have the right of seaweed, then you add so much per acre, I think?—So much per acre; the acres being taken only of the land where it can be used; of course we would give nothing per acre for the application of seaweed on the grass and highest lands, but on the lower tillage lands we would.

4831. Would you apply what you have said about turbary to commonage, seaweed and mountain grazing?—Certainly; all these easements, in the interest of both landlord and tenant, ought to go with the holdings, because apart from the holdings they are of no use, and they ought to be worked with the holdings, and the holdings worked with them; the one suits the other, and there should be no divorce between them.

4832. Is this correct: I think it happens sometimes (very often), that one particular landlord has the right to the foreshore all along the county, and that the tenants of other landlords can get no seaweed at all?—That is true.

4833. It is particularly true in that part of the country, and is there not often great disturbance there?—Yes; the local men thinking they have the chief claim.

4834. And the poorest farmers who live close

Mr. *M'Cartan*—continued.

to the sea are deprived of seaweed?—They complain of that constantly, that others came in upon them that had no right, that is, on that particular shore.

4835. What happens there probably happens anywhere else?—In the County of Down, in your part, the landlord gave the seaweed and it was most valuable; there we have put on as much as 5*s.* an acre.

4836. At Killough, I suppose, and in that direction?—Yes.

4837. Does it make any difference in your valuing the farms, the particular time of year you go to value them; take, for example, if you go in the harvest time, the summer, and see good crops on the ground; are you not more likely to assess a higher rent then, than you would in the winter when it looks bare?—That depends on our skill. We try our best not to be influenced by anything of that kind.

4838. Do you think it possible to be not more or less influenced?—It is, humanely speaking, almost impossible not to be, more or less, but I think, people with experience, and all that, will go as near to escape the influence.

4839. For example, you answered Mr. Russell at the beginning about the application of nitrate; if you went to a place where nitrate had been freely used, would not that give a seemingly fertile appearance to the land?—Certainly; I have been on land in your county where, from the appearance of the crop, I was struck; and when the man began to dig it, I asked him did he apply nitrate, for there was grass on the surface that none but the best of land would naturally produce, and it was very indifferent dug, and he told me on the spot he always did apply nitrate for grass seed purposes.

4840. As to the Court of Appeal, you have been an appeal valuer and a land commission valuer?—Yes.

4841. And as an appeal valuer it was your duty after the appeal was listed, or notice of appeal given, to visit the farm, was it not?—Yes.

4842. And to fix your value on it?—Yes.

4843. And your value then (you were still a Sub-Commissioner), as official valuer, was set up against the valuation of the two lay Commissioners going out to examine it?—That is true, but the practice has been latterly for two Appeal Court valuers to be together; that would put two against two.

4844. Is the practice that they always agree?—There is a very recent case where the two Appeal Court valuers disagreed, and I went over the holdings afterwards single-handed.

4845. Would the landlord and tenant get notice of the different values given by the valuers?—They would; they would both be able to obtain them. By payment of sixpence or a shilling they could get a copy of the report.

4846. Is it the usual thing that they send down the appeal and say, "This is the appeal value"?—That is so.

4847. Would the value appear on the valuation of each of the three who went; the two Sub-Commissioners and yourself?—I think the landlords and tenants were informed of the different values.

Mr. *M'Cartan*—continued.

4847*. You were asked to mention something about the costliness of the appeal; I understand the Chief Commission is a much more costly Court than the Sub-Commission?—They usually get more evidence.

4848. And high-class valuers?—Yes, I think the parties are more particular in bringing evidence of an expensive kind.

4849. Landlord and tenant usually engage counsel as well as solicitors, do they not; that adds very much to the expense?—That may apply in your part of the country.

4850. Very much, does it not, in Belfast?—Yes.

4851. Another advantage to the tenant of the appeal is, I understand, that the Courts of Sub-Commission are brought home to the tenant, and held in the villages and towns of the county?—Yes; there are some places where the only centre which would be practicable for the Commission to sit at would be a good way off the tenant.

4852. As to the Sub-Commission, they go out, and will come to any town or village, or to any number of cases they can get?—Just so.

4853. And that of course costs a tenant very much less?—Naturally, yes.

4854. In the case of appeal they have to travel sometimes over two counties, have they not?—Yes; of over parts of two.

4855. I suppose those cases would be particularly cases heard in the west of Ireland?—They would be; but latterly the Land Commission have varied their practice, and taken the trouble to go to places that no assize court would go to, to avoid that difficulty, but they cannot possibly help inflicting inconvenience of that kind.

4856. As to the working of an arable farm, now; do you think the bill for the labour would not be more than the rent; would not the labour bill be double the rent bill?—It would be more than the rent bill, I think.

4857. If the labour had to be paid for at present wages, do you think there would be anything for the tenant, have you had some sad experience of it yourself?—You have Sir James Caird's experience, his is a far greater authority than mine; I refer you to him.

4858. You were a scrutineer under the readjustment clause of the 1887 Act?—Yes.

4859. Were you engaged in the north of Ireland?—I was; I had charge of ten unions round my own district.

4860. You were not engaged in the County Down?—No; the country was plotted out in sections of that kind and about ten unions given to each scrutineer.

4861. Was there any union in which you were engaged in which high prices and scant and poor crops operated to raise the judicial rents instead of reducing them?—To raise judicial rents?

4862. Yes, to add to them instead of taking from them?—You mean in the schedule published afterwards?

4863. Yes?—Yes; there is no doubt of that; I think the Act applied for three years, and in the first year there was a reduction in every class, in the second year the reduction dwindled, and in the third there was an addition in some unions

to

Mr. *M'Cartan*—continued.

to the judicial rents, but it was not enforced, as a rule, by the landlord.

4864. I never knew a case where they did n t do it, when they were entitled to do it?—I never knew of one where they did; but that is another matter.

4865. You know Lord Kilmorey's estate?—Yes.

4866. It was done there, and you know that that is the poorest part of County Down?—Yes.

4867. Are you aware that in that union, and the only one in the county, the operation of the readjustment clauses was to increase the rent there instead of to reduce it?—I was not aware of that; but they did strike that way in so many cases that I quite believe it.

4868. With reference to the theory as to the provision that should be made for fixing rent in the future, you are of opinion that two Lay Commissioners or officers should be sent on the farm, I gather?—Certainly.

4869. Would not you require the originating notice to start with, just as now?—I would have a simpler notice, and to save trouble I would have it to be obtained at any post office, or very easily.

4870. In case of failure to come to agreement, would not they then have recourse to the Sub-Commission?—Certainly; after they got the decision of the two laymen, if either of them did not serve notice of appeal within a month, I would make that the judicial rent; and if they did appeal, I would give them the right to go before a full Sub-Commission.

4871. You would require them to appeal then?—Certainly.

4872. So there would be two notices; first, the notice of coming on the farm?—Yes.

4873. Then an appeal to the Sub-Commission?—Yes.

4874. Do you think that would not be a more clumsy method than the present?—I think not.

4875. Have not they at the present time (the landlord and tenant) power to enter into agreement?—They have always had that, and they always must have it. I suppose, as long as they like to agree, they can agree to anything; but, as a matter of fact, it does not work out much, I am afraid.

Mr. *Leese.*

4876. I know you have been for nine years an Assistant Lay Commissioner?—Yes, about that.

4877. The precise time does not matter?—It is substantially that.

4878. As Assistant Lay Commissioner were your duties to value for the Sub-Commission?—Yes, as a member of the Sub-Commission.

4879. Another part of your time you have been valuer for the Court of Appeal?—Yes.

4880. I do not mean the Court of Appeal, of which Lord Justice FitzGibbon is a member, but the Head Commission, the Chief Commission?—Yes, I understand; in the form we get it is the Appeal Court, as distinguished from the Sub-Commission.

4881. Do the valuers employed by the Head Commission, the Chief Commission, pass through

Mr. *Leese*—continued.

the training of Sub-Commissioners first?—I think they have all substantially the same experience.

4882. So that any valuer employed by the Sub-Commission, and who subsequently goes to value for the Chief Commission, would value on the same principles, having learnt his trade, so to speak, in the Sub-Commission?—You mean valuers in the Sub-Commission.

4883. Would they adopt the same principle?—I think you asked me as to any valuer employed by the Sub-Commission; do you mean employed as a member of the Sub-Commission?

4884. Let me make it clear; supposing you start as a Lay Sub-Commissioner, and your duty is to value for that Sub-Commission, then subsequently you are employed to value for the Head Commission?—Yes.

4885. My question is: do you adopt the same principle of valuation for the Head Commission as you do in valuing for the Sub-Commission?—Precisely.

4886. You told Mr. Morley that in consequence of your valuation, as valuer for the Head Commission, coinciding with the valuation of the Sub-Commissioners, very often the tenants withdraw their appeals?—I did not say "tenant," as distinguished from "landlord."

4887. Well, that appeal was withdrawn, I will say?—The parties, very often, if the Appeal Court valuer's return comes to, or close to, the rent fixed by the Sub-Commission, then, whichever party has appealed supposes, perhaps, that he will have very little success in the Court of Appeal, and stops there. He knows that if he goes on he will not be liable for costs more than he would be at that stage of the proceedings.

4888. You see what the point of my question is: if the same principles are adopted in the valuation for the Sub-Commission as in the valuation for the High Commission, and if the valuations in consequence are very near, what practical use is there in having two valuers in the High Commission at all?—The Head Commission have a very irksome duty to do; that is, to review a decision that has already aggrieved some of the parties; and they, not being experts as to value, or having any experience themselves, like a fresh opinion; they are in the very difficult position of trying an appeal to upset a decision already arrived at.

4889. My point is that if the same principles are brought into force by both sets of valuers, and if, as you say, the results are very often very nearly the same, what practical benefit does anybody get; on valuing on the same principle there ought to be the same result?—There are individual cases where there is considerable alteration made, but on the average it is 0·2, which is a very small thing. That does not meet the cases of individuals. Though the average may be very small, in some cases it is very large.

4890. I do not want you to say anything to disestablish yourself; is there any reason why the result should be different?—I have been "disestablished." I am no longer an appeal court valuer in that sense. That does not, at any rate, influence my answer in the least.

Mr. *Leese*—continued.

4891. Is there any reason for wanting two valuations?—They find the tenant giving evidence on the value of the land, and the landlord giving evidence, and that they are in conflict. The Head Commission are in a difficulty as to how to proceed, and they think that a fresh valuation may throw some light on it or affect the balance of evidence.

4892. You said, in answer to the Chairman as to the cost of the proceedings in the Head Commission, that it would be better if the work of the Land Commission could be confined to fixing a fair rent, and not extended to investigating titles; have you any practical suggestion to make as to how to disassociate the legal points from the questions of fact?—Well, I do not know. If I were a legislator I could do anything; but I do not see myself any difficulty.

4893. It is for the purpose of legislating that we are asking your evidence; you have committed yourself to this: "I think it would be better if the work of the Land Commission could be confined to fixing a fair rent, and not to investigating titles;" can you give us any suggestion of a practical method of giving effect to that sentiment?—Yes; I would declare the jurisdiction of the Land Commission to extend only to the fixing of rent, and let them imprint that rent on the holding, and that rent so determined would be unquestionable as rent; and the interest, or status, or legal title either to the tenancy or to the ownership would remain unprejudiced; and I would declare in the Act that these proceedings under the Land Commission Court in no way affected or prejudiced the rights or titles to the holding or the status of the parties in any way, but that as regards rent, and rent only, it should be final.

4894. And that in your view would reduce the cost, I suppose?—I think immensely; I think it would withdraw the motive largely for the further legal proceedings that follow.

4895. I am going to ask another question, which is a general question: you said to my friend Mr. Russell, just now, that the improvements were done by the tenants in Ireland for the most part?—Generally, I said, yes. I have known some very striking exceptions on some large estates, where some very substantial and valuable improvements have been done by the landlords.

4896. There are some estates in Ireland where the landlords do the improvements?—Yes.

4897. The Duke of Devonshire's, for example?—On the Duke of Devonshire's, and on Lord Leconfield's, I think, even more. Lord Leconfield had nearly put himself under what is called the Heneage Clause; he made, and tried to establish before us that he had also maintained, the improvements in many cases. The improvements he made there were of the most substantial kind, but he did not entirely maintain them; he allowed the tenant to keep them in order, and consequently never succeeded in establishing his claim.

4898. On the Duke of Devonshire's and Lord Leconfield's estates the landlord does the improvements, as he does in England?—Perhaps; only I would not have wished to confine it to those two; the Duke of Leinster has done a great deal, and many others have also.

4899. But did not you say that throughout Ireland the improvements have been effected by the unaided efforts of the tenants?—Generally that is so.

4900. I ask you first of all as to Ireland; I see you have been travelling a good deal about Ireland; you have been in every county except one?—I have been working officially in every county but one.

4901. Prossibly you have been in the county of Waterford, Lismore?—Yes, I have.

4902. That is the Duke of Devonshire's estate?—Lismore belongs to the Duke of Devonshire.

4903. How do the rents payable under the Duke of Devonshire, where the improvements are done by the landlord, compare with rents on estates where the tenant has himself done the improvements?—I would only answer that question very generally.

4904. That is all I want?—My experience of the few cases that have come up before me on the Duke of Devonshire's estate is, that the rents were very moderate, and I think the tenants abandoned the practice of coming into court.

4905. You are avoiding my point. I want a comparison between the rents payable in an estate like the Duke of Devonshire's, where the landlord does the improvements, and those payable on an estate where the improvements are done by the tenant; are they so much smaller in the case of the Duke of Devonshire as would account for the difference in the cost?—An answer I gave you before, I think, almost answers that. I think, having regard to the fact that the landlord does a good deal, the rents are more moderate; and I think that is the reason why so few came into court.

Mr. *Fuller*.

4906. Have you any rules for regulating your principles of valuing as a Lay Commissioner, any specified rules?—Do you mean authoritative printed rules?

4907. Yes. Let me ask you whether, as a valuer, you belong to any association, or have anything to guide you as to the principles of value in your position as a court valuer?—I never belonged to any association. As to principles, I have already mentioned that I go by my experience, and try to put the highest rent on the best land, and small rent on bad land. It is not merely a question of value in this case; it is trying to disentangle two interests which are very much mixed up together. I put the rent on that belonging to the landlord.

4908. You stated, as I understood, that 5 per cent. was the general percentage you put upon tenants' improvements?—No, I think that was mentioned as the percentage that the tenants usually claim themselves.

4909. You do not put that percentage upon an outlay, say, of a hundred pounds?—Sometimes, if

Mr. *Fuller*—continued.

if I knew of the outlay, I might. The tenant's claim is not rested or based on the outlay, it is an estimate of what it would cost; his improvements have been done from day to day with gaps in between, done part this year and part next, and all he can give is an estimate of what it would cost. If I found a building put up by the landlord, and he showed me the contractor's price, that it cost so much, and after looking at it I considered it well adapted to the holding, and well put up, I would very likely give a rent by way of percentage.

4910. What percentage?—That would depend on the durability of the house.

4911. Do you put a different percentage upon an improvement proved by the landlord to the percentage you put upon improvement proved by the tenant?—I think that question can be answered in several ways quite consistently. One must know what the improvement is before they can say what would be a proper percentage if you go by percentage at all or what percentage ought to be allowed. As to an outlay on drains that will have been exhausted in 10 or 12 years, the percentage there ought to be a fair one; if in the nature of a house which would last for 50 years, and be useful for 50 years, the allowance there would be a smaller one. The small percentage spread over 40 or 50 years would have time to recoup the person making the investment.

4912. You have not answered my question as to whether you put a different percentage upon the landlord and the tenant?—The improvements being the same?

4913. Yes?—No, there is not any difference, I think.

4914. Take this as a supposititious case; a tenant has a holding for which he pays the landlord 9*l.* a year, of which 4½ acres of what I call good arable land, in good cultivation, fenced and so forth, and he has the right of pasturing seven cows outside this holding; the buildings belong to the tenant for which he has given 200*l.*, as the tenant's interest; supposing he asked for a fair rent, how could you fix that fair rent, taking into consideration the 200*l.*, the value of the tenant's interest?—The Act under which we work precludes us from taking into account the amount of money or money's worth paid for a tenancy. There is a clause in the Act which says that in fixing a fair rent under this Act, the amount of money or money's worth paid for a tenancy shall not be taken into account.

4915. Is that in the original Act?—Yes, I think so.

4916. Is not that considered a very great hardship?—No, I do not think so.

4917. Not if the man has paid 200*l.* for it?—If he paid it to the landlord it would be a different matter.

4918. If he has paid for the house and buildings and generally for the interest in the farm 200*l.*, is not that to be taken into consideration at all in fixing a fair rent?—Do you mean 200*l.* paid to a landlord?

4919. No, no, to a tenant who buys the interest?—That is a purchase of the tenant right; if you tried to take that in, you would very speedily end rent; they pay such enormous

Mr. *Fuller*—continued.

prices for tenant right that to give a tenant an interest on that would make the matter of rent a very simple one.

4920. Then, as a matter of fact, you do not consider the value of the buildings, although those buildings have been valued, and have been purchased for a price, say 200*l.* When that price came in to the purchase of the tenant right, did you take into consideration that 200*l.*?—We regard those buildings as his, and put no rent on them.

4921. Do you value the land as if there were no buildings there at all. Supposing for instance this man had reclaimed that land, and brought it into the value of 2*l.* an acre, and has built those houses or buildings upon it, and the particular tenant sells that property to an incoming tenant for 200*l.*, with the land reclaimed, and so forth, do you take none of that into consideration in fixing a fair rent?—We try to treat the purchaser as standing in the shoes of the seller, and when his successor comes what is sold does not affect the question. It is altogether the landlord's interest in the holding that we have to fix rent on. A tenant's interest is a matter for himself, and would be left to himself; and if he gives 2,000*l.* for what is only worth 200*l.* that is his own affair.

4922. I want to arrive at how you arrive at a landlord's interest. If the tenant has done all the repairs, and cultivated all the land, and brought it up to a value such as the value of the rent which the landlord adopts as his own valuation, 9*l.* a year for this particular holding, how do you value the landlord's interest in that?—You have mentioned that a part of it consists of land worth 2*l.* an acre. If I went on that land I should suppose it to be worth 2*l.* an acre; the tenant in court would probably prove that he had thoroughly drained it at a fixed cost of 2*s.* or 2*s.* 6*d.* a perch, which would run up the value to 8*l.* or 10*l.* an acre; I would ask him to show what the outlay upon his drains was, and the class of land; I would test his evidence as well as I could, and if I believed it to be well laid-out money, and I would take a percentage off the present value, so as to recoup the tenant during the activity or what would be the life of the drain in my opinion, and so eliminate the tenant's interest, and fix the antecedent value, which is the landlord's share.

4923. Then taking the antecedent value of the landlord, he has had the power to rack-rent everything in the past as fully as may have been convenient?—We have no means of going into the rent in the past; we have no power of making up for what is past; we have only to deal with it as it is on the day we are there.

4924. Is not that considered a very great hardship to the tenant?—If you go into the question of considering "hardships," you would have a large number of people considering it was a great hardship that I should have gone there at all to reduce the rent as it was; there are hardships on both sides.

4925. Do I understand that the landlord looks upon it as a hardship that you have to put a fair rent on it?—He looks upon it as a hardship that

Mr. *Fuller*—continued.

an outside authority should come in arbitrarily and fix it; it is a new thing, and it is an unusual thing; the circumstances are unusual.

4926. I want to know, in your experience, whether these Acts do work for the advantage of the landlords in that respect; that it is a continuation, as I understand, of the rack-rent system of years that have passed by?—It is not a continuation of rack-renting, I think. I say that I have stripped the acre for the tenant of everything he has done to it, and laid rent on what it was before he did anything to it. If I have blundered and given him too little, he has a hardship; if I have blundered and given him too much, the hardship is on the other side.

4927. I think you stated in the beginning of your evidence that you would put on 3*l.* laid out on a certain drainage system, and that where the circumstances were satisfactory, and there was a good fall, it would bring in an increased value of 10 per cent. upon that outlay of 3*l.* to the tenant; is that your opinion?—I think that is not my answer, but I can imagine that as a conceivable case; it would be a most unusual one.

4928. Would it be 5 per cent. so as to make an acre that had been worth say 1*s.* equal to 4*s.* an acre by the drains?—Ireland, I daresay you know as well as I do, is infinitely various in the value and character of the land, and the results of improvements are almost as various. A tenant will begin to reclaim a tract, and the lower part of it where there is shelter, and where there was some soil perhaps before will make him a very fair return.

4929. In your experience as a farmer, can you, by an outlay of 3*l.* on an acre of ground, make that land generally, or in any particular instance, worth 3*s.* an acre more, when it was worth only 1*s.* an acre before?—An outlay of 3*l.* an acre.

4930. That is a sum you named yourself?—I think not. I am not sure that it was. I think that is a mistake. I do not quite recognise my own answer in it; but I will answer now as well as I can if you put it to me.

4931. "If to get rid of the water they have to go away ever so far from the particular spot or 'acre' he is trying to reclaim, that would very much affect the question; but if it were friable open peat, with a good fall and outlet, 3*l.* might produce a return for 10 years of 5 per cent." I understood you to say in the examination it was 10 per cent., and my object was to find out whether you considered, first of all, that 3*l.* laid out on an acre such as those circumstances suggest would produce 5 per cent. or 10 per cent. on any acre of land within your experience?—I think an outlay might, and probably would, produce in some cases, 5 per cent., and in very very rare cases, it might result in an increase of 10 per cent.

4932. That is your experience as a valuer, is it?—If I speak of a case that is "very very rare," I do not know how far I am right in calling that "my experience." It is possible I may have come across land like that, but I can very well understand how cutting at a particular spot where the water was dammed a short cut, and not a very expensive one, an acre behind, which was wet and vegetation ruined by the wet, might be increased by 10 per cent. I think 5 per cent. is a much more applicable illustration than 10 or 15; 5 would be generally applicable, but 10 or 15 I think so rarely applicable that it might be thrown over as an illustration.

Mr. *Clancy.*

4933. Do you know whether the Appeal Court adopted your valuations?—I do not know.

4934. You never had the curiosity to find out?—I knew in some cases that I was more than ordinarily interested in. I looked to the newspaper to see the result, and they very closely followed it; but that applies to very few cases.

4935. Is it not a fact that in a great many cases the changes up and down are very little?—That is true; yes.

4936. Can you account for those small changes; do you know how they are arrived at. It is very curious, is it not, sometimes to find the Commissioners fixing rents of shillings and sixpences, even coming down to such small details as shillings and pence?—Yes.

4937. What is that for?—I think this occurs from the individual feeling of the Commissioner. I have worked with men who wished to express their views up to that detail, and who go so very close to it. I myself have always preferred if I were nearer 10*l.* 5*s.* than 10*l.*, to make the rent 10*l.* 5*s.*; if I were nearer 10*l.* than 10*l.* 5*s.*, I would make it 10*l.* I would throw off a shilling rather than have 10*l.* 1*s.* perpetuated; but I have been working with men whom I respect greatly who take it out to a shilling, and differences arise I think in that way.

4938. It looks odd to find a rent of 100*l.* and over fixed at 100*l.* 6*s.* 1*d.*?—If they left off the penny I would think it quite right; I think the "100*l.* 6*s.*," ought to go.

4939. You cannot account for these small changes otherwise than you have mentioned?—No, it is just the slight difference of opinion on a matter of detail on some particular part of the holding.

4940. In your experience, have you met any cases in which the landlords claimed or proved the improvements?—Oh, yes.

4941. In what proportion of cases?—The cases I have met were on Lord Leconfield's estate; he proved them all practically.

4942. Is that the only case?—No; I have met many cases where the landlord made improvements and proved them. In some instances the landlord would contribute 6*d.* per perch to the drains, which was a good practice, rather encouraging the tenant to make as many drains as possible.

4943. Is that the only sort of improvement you have met with?—That is a very good sort.

4944. Is that the form the landlords' improvements have generally taken?—I think that is a practice which was perhaps more general in the north.

4945. Will you say that in these cases the landlord did not recoup himself by putting on additional rent?—I know many cases where there was no change made in the rent at all, whether

it

Mr. *Clancy*—continued.

it affected the periodic changes or not I am not in a position to say.

4946. Do you know cases where it did occur?—I knew some cases where there was a practice of adding 5 per cent. for the amount of money spent by the landlord, that would be probably at the request of the tenant and in respect of buildings.

4947. Would not these cases outnumber the others?—I do not think so, with regard to the sort of improvements we are now speaking of.

4948. What sort of improvements are they?—Buildings.

4949. You said that that was generally the form the landlord's improvements took, did you not?—No, I did not. In Lord Leconfield's, and some other cases, slates were given for the buildings.

4950. You have alluded to Lord Leconfield several times, is there any other?—Yes, the Duke of Leinster and the Duke of Devonshire.

4951. What proportion does that class of landlord bear to the others in your experience?—The proportion was small, as I have already stated; in my experience the improvements generally are made by the tenant.

4952. With regard to a certain percentage (at all events, these few), it is your evidence that they have recouped themselves?—I have known cases of that kind, but they were very very few, I must say.

4953. You said that you considered prices in fixing the rents; have you considered prices apart from or together with the yield?—I consider the prices, and I consider the yield, and I consider the aspect, and I consider the distance from the town.

4954. I am not asking you about those things. Do you also consider the price together with the yield?—I do not think in that form I could quite answer the question.

4955. Did you take into account the general character of the yield of the years which the prices ranged over?—I think fluctuations depend probably upon a variety of causes.

4956. I am not asking about that. Did you take it into account, however it fluctuated?—I never fixed a rent without taking produce into account.

4957. That is an answer; but in cases in which prices alone are taken into account apart from the yield, it might follow that great injustice would be done to the tenant?—Certainly.

4958. Because the very shortness of the yield might lead to the high price?—That is true.

4959. And do you know that that defective estimate of rents has been in vogue anywhere in the Land Commission?—Of course on the question of varying judicial rents, the great complaint against it was that produce was ignored.

4960. Was it not notorious in the earlier years after the passing of the Act that they never took it into account at all?—Not at all; in my experience I have worked with nine different chairmen, and in that respect my experience would, I think, very fairly represent the whole practice, and I think the factors considered were just as many and as carefully considered then as they are now.

Mr. *Clancy*—continued.

4961. And do you say that there was no such thing?—As what?

4962. As taking into account the prices apart from the yield?—I think there was no such thing.

4963. Was not there a great complaint and outcry about it at one time?—Of course, in reading the papers one sees complaints; but no person outside, I think, had any opportunity of knowing how the rent was fixed or how far prices or produce were divorced from each other, or considered *pro* and *con.*

4964. It did take place in 1887, or in administering the Act of 1887?—In varying the judicial rents I believe that was decided by two of the Chief Commissioners against one; I believe one judge thought that yield ought to be taken in; there were some decisions published.

4965. But the Act was express upon the subject, was it not?—Well, I am not sure about that.

4966. I think the Act ran, "having regard to price"?—If you wished to interpret the price the man got for his whole produce he would very likely get on the short year's produce as much as on the large.

4967. They did not take it into account anyhow in the Act of 1887?—Perhaps not.

4968. And you say you do not know that that practice of taking into account the prices only, did not prevail after the Act of 1881 was passed?—No, I think it never prevailed.

4969. Are not you aware that there was a great complaint of that kind after the Act of 1881 was passed?—I have nearly forgotten it; but I am quite sure that if you say there was, there was a complaint of that kind; but I think it was an unfounded complaint.

4970. As to the reasons why tenants do not come into Court, is it not a fact that a great many are perturbed by fear that their right to go into Court would be successfully disputed?—There are cases of that kind.

4971. A good many?—Yes; where the legal tenant has not been raised after by the decease of a parent and it has been allowed to drift on.

4972. Whatever the particular cause has been, that feeling extensively prevails?—I would not say "extensively prevails"; but I think there are a good many isolated cases here and there of that kind.

4973. Is it your experience that the landlords in the Sub-commission Courts raise every possible point, as a rule?—That is a very varying thing, too, I think. There are many landlords that do not; but there were some who did, unfortunately I think, throw obstacles in the way a good deal.

4974. A good many of them; is it not a general rule that they fight as hard as they can?—It was more general at first than it is now, I think.

4975. What sort of reclamation would you take into account in favour of the tenants in fixing rents?—Any reclamation adding to the present letting value.

4976. I am asking you to describe the sort of reclamation which you take into account?—The principal reclamation of this kind has regard to cut-

Mr. *Clancy*—continued.

cut-out bog, where turf has been cut. Until the turf has been all taken away, and the tenant sets about levelling it (and generally he has to drain it), and he begins to crop it very early, first, with potatoes, then, after two years of that, he takes a grain crop.

4977. Is that the only sort of reclamation you take into account in favour of the tenant?—No, every sort. There is a good deal of reclamation of moor with stiff rocky sub-soil where the return for the work would not be 1 per cent. tried; sometimes a man will attack a bit of rock.

4978. Are not there plenty of instances of land other than the two sorts you have described where boulders are removed, and turf cut away and all that, which you are not allowed to take into account?—No, I think the boulders certainly we are allowed to take into account.

4979. Do you mean to say that if you had a patch of fairly good land which did not require reclamation except in the way of removing stones from it, bog, boulders, and all that, you were allowed under the Acts to take that into account in favour of the tenant?—Yes, if within 20 years, and not affected by any of the exceptions.

4980. I am talking of the improvements made before the 20 years, which are always taken into account in favour of the tenant?—Outside Ulster, at any rate, any improvement made more than 20 years ago, except reclamation of waste lands and buildings, those are barred.

4981. What do you understand by "reclamation of waste land"?—Land that was previously bog or moor that had never been cultivated.

4982. Is there not plenty of land reclaimed at as great a cost as any land can be reclaimed at, other than those two kinds, which you are not allowed to take into account?—Well, certainly crag land, or the clearing of boulders away, is most expensive work, but that is not called reclamation.

4983. You are not allowed to treat that as reclamation?—I have known land in Galway where it was so evident that the whole soil depended upon this removal of stones, that we held it to be reclamation.

4984. But that was exceptional?—Very.

4985. And there are plenty of cases in which this reclamation of land does not come under "moor" or "bog," which you are not allowed to take into account?—In cases where the tenant has been tilling with spade amongst the rocks before, if he can prove the removal of rocks and it is within 20 years, he can get credit for that.

4986. You have told us that you value the land without the buildings, when the buildings belong to the tenant?—Yes.

4987. Now are there not a great many holdings where the buildings are in fact the principal

Mr. *Clancy*—continued.

value of the whole holding; are there not plenty of instances in which the land would be practically valueless, or absolutely so, if the buildings were not there?—If the buildings were not there, it would not be of so much value perhaps, but still it would not be "valueless."

4988. Will you undertake to say that you have not been unconsciously affected by the presence of buildings on the land in valuing the land without the buildings?—I think that is one of the things I would escape from very generally, I do not think I would be affected by the presence of the tenant's buildings. In putting a value on land between summer and winter, and between well and badly manured land, the difficulty is much greater to avoid doing injustice, but with regard to buildings I would not be conscious of any great difficulty.

4989. You might be unconsciously affected by buildings being on the land, might you not?—I can give no answer about what I would be unconscious about.

4990. You might be affected in that way, and so put on more than you would put if the buildings were not there?—If I would be unconscious of it, how could I give an answer to the question?

4991. Do you think it is likely?—I think it is not likely that I would be affected unfairly or incapacitated from putting on the proper rent.

4992. Is it not a fact that there is plenty of land valued there at 1*l.* an acre, which would not be worth 5*s.* a acre if the buildings were not there?—I would not say "that there is plenty of land" of that kind. I do not know under what circumstances it would be, or how it would exist, or where. If the man who lived in the buildings were to go away to-morrow, his neighbour would give as much for the holding.

4993. Do I understand you to say that you would sweep away all those restrictions in the Act against tenants entering the Land Court?—That is a pretty wide question; but I would rather refer you to specific answers, because I do not know what would be included in "all restrictions." I would not shut him out for any unimportant or technical matter at all. I think the real matter is to get a rent he can hope to pay properly and punctually, and I would let him in always to do that.

4994. Take the case of demesne lands. Suppose you had evidence that a piece of land was held for 80 or 100 years, and that it was used as an agricultural farm, you would not shut it out because it was described as demesne land, because it was held under a lease?—If it were the subject of a lease it would be very largely a question of law, and I would have the benefit of the advice of a trained lawyer with regard to it.

Tuesday, 19*th June* 1894.

MEMBERS PRESENT :

Mr. Brodrick.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. JOHN CUNNINGHAM, again called in; and further Examined.

Chairman.

4995. THERE is a short explanation, I believe, you wish to give in reference to your answers to Questions 4688 to 4691, page 253, as to the tenants' improvements?—Yes; I wish to say that my answers to those four questions refer only to improvements other than buildings.

Mr. *Brodrick.*

4996. You said, in answer to Question 4592, that the rents fixed by the Commission between 1881 and 1887 were not now fair rents; you think they are too high for the present state of matters?—Yes, I think they are.

4997. And in 4646 you said that in fixing fair rents in 1881 and 1882 you were at the end of a period of good years, and you think that affected the minds of the Sub-Commissioners in fixing rents?—Yes. I think that naturally, and necessarily their minds would have been instructed by the general course of prices for the previous period.

4998. Is it not within your recollection that the Land Act of 1881 took its origin in the fact that there had been great agricultural depression?—Yes, in 1878 and 1879.

4999. In 1878 and 1879, which were years of great depression?—Yes.

5000. And also the years 1880 and 1881, were they not?—They were beginning to rally a bit, but not much; I think the highest top was reached in 1887, the highest range of prices.

5001. But the prices depended on the fall, and there was a difficulty in paying rents?—Prices turned, I think, from 1877, and dropped slightly; they then rallied again, and went up to the very highest point in 1883. In 1883, I think, the price for store cattle touches the high-water mark.

5002. In taking store cattle, you are taking only one item?—I am including the store cattle.

5003. What I want to arrive at is: was there not at the time that the Commissioners began to

Mr. *Brodrick*—continued.

fix rents, in 1882 and 1883, very great difficulty in the payment of rent?—There had been a very wet harvest, I think, in 1878, and other things; but that was only a temporary depression, in my opinion.

5004. You are aware, are you not, that Parliament passed an Arrears Act about that time?—Yes.

5005. And was not that Arrears Act largely due to the fact that it was assumed that the tenants were unable to pay existing rents?—It was; but I do not think that was a fair indication of the general state of the agriculture of the country; that had to do more with the congested and poor districts, where the chief reliance was on the potato.

5006. In fact, your view is that the minds of the Commissioners were more influenced by the general prosperity in the sixties and the seventies, than by the state of agriculture in the previous five years, which had been disastrous years?—Yes; the previous three years, I should say, or three to five; I think so. I think I myself, and most men that I know, would have been hardly prepared to drop, after 25 years of steady improvement, so soon as five years. The hope was that it was merely temporary, and that we would get back again to the state of things we had lost.

5007. You think the Sub-Commissioners, as a rule, were a long-sighted body of men in that respect?—It would not be, perhaps, becoming of me to give them a character, but I think they were probably as good as could be got at the time.

5008. But do not you think any of their minds were influenced by the temporary depression?—Well, I am not aware of any such case.

5009. Have you fixed many rents as low as Griffiths' valuation?—Yes; particularly in the north I have fixed rents below Griffiths' valuation.

5010. Particularly in the north?—Particularly in the north.

 5011. You

Mr. *Brodrick*—continued.

5011. You have stated that you have had experience in County Clare?—Yes.

5012. And there you fixed rents on estates as low as Griffiths' valuation in some cases?—I could hardly call up the relation between the rents fixed and the valuation; it is a long time since I was in Clare; but Clare is a very varied county like most of the other counties; part of it is very poor, and part of it is good, and I think the valuation would be higher relatively in the bad land than on the good lands. I think the recent depression has hit the bad lands more than the good.

5013. But in the case of land in good condition, would you consider Griffiths' valuation a high valuation to put on in the years 1882 and 1883?—You see, Griffiths' valuation, as we get it, includes the buildings. There are many holdings in Clare, where the buildings are of considerable value, and, if you speak of Griffiths' gross valuation, I should think it would be too high; but if you speak of the valuation of the land only, then I am not sure how it would stand. I think it is very difficult, and rather apt to mislead, to talk of Griffiths' valuation, for where the buildings are good, the value of buildings is included, and, as a rule, these belong to the tenant.

5014. But in cases where the buildings were good, and the land was in fair condition, would you have felt it right, in 1882, to fix prices as a whole at about Griffiths' valuation?—I should say that my respect for Griffiths' valuation was never enough to make me pay much deference to it in fixing rents. I think it varied very much even in the same districts.

5015. You see you arrive at this, do not you, that you consider the rents fixed in 1882, too high, as compared with the prices ranging from 1887 to 1893?—Yes.

5016. That was your evidence?—Yes.

5017. But you do not think that Griffiths' valuation would be too high to apply where buildings were good if it fixed rents at that rate in 1882 and 1883?—Do you mean if the buildings were the landlord's?

5018. Where the buildings belong to the landlord?—I think I would rather repeat my answer, that I would not like to take Griffiths' valuation as any sort of a safe guide. For general and rough purposes it may be looked at, but I think it varies very much even in the same district.

5019. I was keeping to County Clare at that moment. Now, have you compared Griffiths' schedule of prices in 1852 with the authorised prices of the Land Commission of the last six years?—I have often compared the schedule printed by authority in connection with Griffiths' valuation, and I hinted at what I thought made it rather misleading. It took 1852 at a point where prices had temporarily dropped, and from which they almost immediately rose again, and I should think if Griffiths' valuers were like modern valuers, as I must assume they were, they would not have been influenced by that solitary one or two years, of a drop to 1852, but would have been rather influenced by the general range of prices.

5020. Was not that what the schedule of Griffiths' valuation was formed upon; the general range of prices, and not only the prices of a particular year?—I think not.

Mr. *Brodrick*—continued.

5021. You think it was formed on the prices of a particular year?—I think they were the prices of 1852.

5022. You are aware, are you not, that as compared with that particular range of prices in almost every single particular those prices ranged lower than the lowest prices of 1887 to 1893?—I am aware of that.

5023. Consequently, looking at it roughly, by the scale of prices, rents fixed in 1882, as high as Griffiths' valuation would not now be too high?—That is so.

5024. Did you fix any rents on Lord Leconfield's estate?—I did.

5025. Would you recollect from your book any special cases?—I have not my book here; but I do recollect a special case, close to the workhouse at Kilrush, upon which Lord Leconfield had expended, I think, about 3,000*l.* in most substantial buildings and drainage; it was a very large holding, and it had a very large homestead on it; I also remember, less distinctly, cases where the outlay had been smaller.

5026. I will take a supposititious case; I will take the case (I do not know whether you fixed the rent in this case) of a man called Matthews, the Poor Law valuation was 268*l.* 15*s.*; Griffiths' valuation, and the original rent, were about the same; there had been an expenditure of 1,200*l.* on that holding; would you have expected that valuation to be put down, that being the expenditure of the landlord, without improvements by the tenant?—That is not a case that I was speaking of.

Mr. *T. W. Russell.*

5027. Did you fix a rent there?—I have no recollection of it.

Mr. *Brodrick.*

5028. If you look back to any of these cases could you recollect any of them?—I could not; but I would be very willing to hunt up my books (I have preserved them), and stand examination as to any particular holding. I could not recollect at this time without the books.

Mr. *T. W. Russell.*

5029. How long ago is it since you were in Clare?—I think it must be five or six years. I really could not tell you. I have been in so many counties; but I was a good while in Clare.

Mr. *Brodrick.*

5030. In the county of Clare, about which you know a good deal, do you consider that improvements made by the landlord would not have the effect of raising the rent beyond Griffiths' valuation, fixed 30 years ago?—That brings me back to what I have already rather declined to take (that is Griffiths' valuation) as a reliable basis. I would say this as regards the outlay on buildings, just as we have had tenants make an injudicious outlay on buildings, so we have found cases where the landlord's money had been expended,

Mr. *Brodrick*—continued.

expended, and the increase of the letting value on the day of our inspection had suffered very serious diminution, from what, looking at it in regard to cost, any person could have expected. That was our opinion. But a good many of Lord Leconfield's buildings were not of that kind; a good many of them were well done.

5031. If you found the buildings good, the money having been expended on them by the landlord, and the land deteriorated owing to the want of care on the part of the tenant, how would you consider those facts in fixing rent?—I would endeavour to give the landlord a fair return for his outlay, considered in the light of the fact that he had added to the recent value of the holding; and as to the deterioration caused by any neglect or failure on the part of the tenant, I would try not to let the landlord suffer by that.

5032. You told the Committee last time that if a tenant made improvements you would give him 5 per cent. upon them, and sometimes as much as 8 per cent.?—Yes.

5033. If a house was repaired by a landlord, would you only give him his 5 per cent. on the money spent?—Having regard to the fact that the tenant would be expected to keep the buildings in repair, I should say 5 per cent. would be a very full allowance to give the landlord on the original cost.

5034. You would?—Yes; I think it would be too high as a rule.

5035. You do not think for the improvement made by a tenant 5 per cent. is an extreme amount?—I think it is not, having regard to the number of cases in which his outlay does not reasonably repay him.

5036. Then the landlord's money expended is not worth as much as the tenant's?—If the result would be the same it is worth as much, I think.

5037. I mean, if I am a landlord, and put my money into a house for my tenant, I ought not to be allowed as much return for that money as a tenant who has put his money into drains on his farm?—No; the drains are much more impermanent (if that is a good word), the buildings are much more durable; the landlord would be fairly entitled to expect a longer letting value from his buildings than the tenant could at all reasonably expect to result from his drains. That is my view of it.

5038. You regard it as paying off the capital, as it were, in the tenant's case?—Yes.

5039. What is your view as regards the prices of tenant-right outside Ulster, have they been inclined to diminish or increase since the Land Act?—I can hardly answer that; I have known a very high rate of prices paid for tenant-right in Cork, I think almost as high as any place I know.

5040. Since the Land Act?—No, on the Kingston property round Mitchelstown. The evidence there out of the landlords' books showed that the tenants had been in the habit of paying from 40*l.* to 60*l.* an acre previous to any Land Act.

5041. Previous to the Land Act?—Previous to the Land Act.

Mr. *Brodrick*—continued.

5042. My question was rather this: since the Land Act what is your experience as regards the land passing where sums are paid for tenant-right, is a high or a low price paid?—I would say that the Land Acts, so far as they were applied in giving a tenant a legal footing on his holding, would have had the tendency of increasing the value of his interest; but then I think that has been taken back partly by the drop in prices and the depression of the times, that is to say, the drop in agricultural values.

5043. That has been checked, has it?—I think the upward tendency fostered by the passing of the Act would have been checked by the depression in agricultural values.

5044. As a matter of fact you told the Committee the other day that you thought an injury was being done to the tenant by the right of pre-emption given to the landlord?—Yes, that is my view.

5045. You say, in answer to Question 4735: "I have no hesitation in saying that I would recommend the fixing of the specified value to be done away with"?—Yes.

5046. Was that because a tenant would get more if you did not fix the specified value?—Yes.

5047. Then, apparently, you consider, by that answer, that the tenant-right is still fetching a considerable price despite the drop in prices?—What was before my mind in giving that answer was that the open market would give the tenant a better price for his interest without injury to the landlord.

5048. But if the tenant can in the open market get even a higher price than you would fix for the landlord's pre-emption, can you argue that he is damaged by the rule on which his rent has been fixed?—Yes, because the Act hampers me and limits me in fixing what the specified value should be, by declaring that it is not to be a competitive price and by other restrictions.

5049. Quite so, but you are not quite dealing with my point; my point is, not whether the price a tenant could get in the open market would be higher than the one you fix now, but whether if he can get so high a price in the open market the rent which has been fixed upon him can be a damaging rent or a deterrent rent?—I think that the rent is not a deterrent rent; but the fact that he cannot get more than the specified value we fix, is deterrent as to getting a full price for his interest.

5050. And do you not recognise any relation between the rate at which a fair rent is fixed, and the price given for a tenant-right?—I should certainly say there would be relation; at least the one would affect the other.

5051. Do you consider that, except where there are improvements, it is desirable that these high rates of tenant-right should be encouraged outside Ulster?—I do not think it is desirable that they should be encouraged, but I do not necessarily hold that they ought to be restricted by Statute.

5052. You seem to wish to encourage them. You say you would not deny the right to sell at the very best price the tenant could get; have

Mr. *Brodrick*—continued.

you considered how that affects the incoming tenant?—Yes.

5053. Do you consider that for the good of the country, or for the incoming tenant himself, or at last, for the landlord, do you consider that a man having paid an enormous price, unless there is something to show for it in the way of improvements, enables him to have a good chance of cultivating his holding?—I think the landlord's interest has not suffered to any extent, indeed I think it has benefited by the existence of the Ulster tenant-right custom, where the very essence of it was, the right of the tenant to sell in the highest market he could get.

5054. Let us get the condition of the tenant: the tenant comes in and you fix the rent at 50*l.* instead of 60*l.*, and you propose that he should be allowed to sell that rent in the open market; now take the incoming tenant, who has given, we will say, 250*l.*; is he better off than the tenant was before you reduced his rent?—He is no better in respect of that holding, but he may have a better balance at his bankers, or he may be better in many other ways, or be better fitted to be a good tenant to the landlord.

5055. How can he be a better tenant; at what price do these tenants borrow money to buy the tenant right; do they ever borrow at less than 5 per cent.?—You do not assume that they all have to borrow.

5056. Have you ever heard of a tenant outside Ulster who did not borrow, as a rule, to buy the tenant-right?—I could not answer that.

5057. Having regard to questions that have been asked you, is it your opinion that it is a solid advantage to the tenant, incoming, to have paid a very large price for his tenant-right, unless it is represented by improvements?— Did you say to the "incoming" tenant?

5058. Yes, to the incoming tenant?—No.

5059. The man who is coming to cultivate the soil?—No, I think not.

5060. You gave evidence, I think, that a tenant finds it difficult to prove his improvements?—Yes.

5061. In answer to Question 4526, you say: "The necessity of giving legal proof of improvements by the tenants does often impose hardship and injustice?—Yes, that is my opinion.

5062. Do you find that the landlords are in a position, as a rule, to give evidence?—Yes.

5063. Have they kept books?—Yes, that has been my experience.

5064. On the smaller estates have you found that books have been regularly kept?—Where improvements have been regularly made I would say there have been generally records kept of them.

5065. Can the tenant generally bring evidence of his neighbours, and so forth, as to improvements made?—His neighbours very often fail, when he brings them, to be precise enough for complying with technical rules in the court.

5066. But, as a rule, have you found that the tenant, when he has claimed improvements, has been able to show you that the improvements are there?—I think in many cases he has not succeeded in showing me that they were all there; but he has shown in a large number of cases a very fair remnant of them.

5067. An Irish tenant does not usually lose improvements for want of asking for them, does he?—I have known cases even of that kind, where they did not ask for them where they had done them; and I should say it would be unreasonable to expect Irish, or any other tenants, not to ask for what they thought they were entitled to.

5068. Do you consider that you have had to do injustice to the tenant in respect of improvements excluded by the Act; have you wished to give him the benefit of improvements which by the Act you could not?—There are many cases, I think, of that kind.

5069. Now take the exceptions in the Act: have you found cases where it was a hardship to the tenant not to have the benefit of improvements made before the actual purchase of the estate by the landlord or his predecessors in title?—I have no specific case of that kind, I think, before my mind.

5070. I suppose, speaking generally, you would think the improvements made by the landlord or his predecessors in title should not be credited to the tenant?—Certainly not.

5071. Do you think that a tenant ought to have the benefit of his improvements where he has held under a lease or where they have been made under a contract for a lease?—I would say from my knowledge of the generality of leases that the giving of a lease had little to do with the improvements.

5072. But a lease was generally held to be a valuable consideration up to a short time ago, before the Land Act?—Well, that has been the lawyer's way of looking at it, but I myself knew improvements on an estate, where leases were universal, and they had no relation to valuable consideration, in practice; anything of that kind was never thought of. I think on the Downshire Estate, where there are many leases, the valuer, when he went to value, or before he went to value, what rent ought to be fixed under the lease, was instructed to exclude the tenant's buildings.

5073. Have you always found that the landlord has a record of the reductions of rent given in consideration of improvements to be made?—I have met with many cases of that kind. I would not say "always," for I really would not know.

5074. Have you not had cases where landlords have alleged reductions of rent, which they have not been able to prove, because they have not been entered?—No; I think not.

5075. Do you think the tenants should have the benefit of improvements made before the year 1850?—Well, that opens up a very wide matter. I think there ought to be some restriction or some limit beyond which the question should hardly be opened; but whether I would fix it at fifty years ago is a matter that I would rather discuss with other men of as much experience as myself, and arrive at what the majority of reasonable people would consider; but I think,

Mr. *Brodrick*—continued.

think, perhaps, that a limit might be provided which would narrow the region of possible injustice.

5076. I rather wanted to ask whether cases of hardship had come under your notice in consequence of that restriction of 1850. Could you tell the Committee of any case of hardship you had in your mind?—The moment a tenant would refer to an improvement made twenty years before the passing of the Act he would be stopped—he would be told that that was outside what he could claim for, and we would hear no more about it, so that I would not have matters of that kind brought very fully before me, that is as to whether he had improvements that were valuable or not.

5077. You had not in your mind any special case?—No, I have no special case of hardship in my mind.

5078. In a case where a holding is valued at more than a hundred pounds, what do you say as to the exception?—I think that is an unnecessary exception. That holding might as well be left to the discretion of the Land Commissioners as a holding of 90*l.* or 50*l.* If they are competent to deal with the one class of holding they ought to be competent to deal with the other; and it creates heart-burning and soreness beyond any result that is worth it.

5079. As a rule, a man in a holding of over a hundred pounds is a substantial man who can make a bargain with his landlord?—Yes; I suppose that is the only reason that justifies it.

5080. Do you think the landlords have had any hardship in cases where they have made the improvements and have not been able to prove that they maintained them?—It is quite possible there may be such cases, but I really have no experience of them.

5081. No experience?—No.

5082. Not even when you were fixing rents in County Clare?—No. In County Clare, where the landlord made the improvements, they had most excellently kept accounts and were able to give particulars as to detailed outlay very fully.

5083. If you were told that a certain landlord had expended 60,000*l.* on his estate in 30 years, and that he was to be treated exactly the same as others who had not spent anything, would you consider that a hardship?—I would—other things being equal—certainly.

5084. I want to ask you one question about turbary. You mentioned, I think, two estates in which the landlord had recouped himself for the reduction of rent by the Land Commission by an increased charge for turbary—could you tell the Committee what those estates were?—I mentioned two estates where the landlord's representative refused absolutely to allow the turf to be put into the order. Then I mentioned one of them on which evidence was given that a charge for the turbary had followed a reduction of rent, and practically nullified it. If it is thought right that I should mention that estate, I have no objection to do it; but I would like to know if it is wished that I should mention the name of the estate. I will be very glad to do it if you think it right.

Mr. *Brodrick*—continued.

5085. You say that the statement was made in the court-house at Boyle?—It was.

5086. By the landlord's representative?—In his presence.

5087. I suppose you meant the estate of the late Colonel King Harman?—That is the name of the estate.

5088. Is it not a fact that the bogs would not last beyond a short period—fifteen years—on that estate even if the landlord did not guarantee turf?—No, I think not.

5089. You think that the bogs were capable of lasting longer?—I think so, and moreover that was not put forward as a reason, for had it been it would have satisfied us on the spot; if it had been stated that the bog would not last, there would never have been a second word about it.

5090. Did you fix those rents yourself?—With two other colleagues.

5091. On Colonel King Harman's estate, did you fix those where the question arose?—I fixed rents adjoining them.

5092. Are not you aware that in this case the Sub-Commissioner stated that it was in consequence of turbary not being guaranteed that they had made the judicial rent 10*s.* less in each case?—That would be the practice, I should say, on all Sub-Commissions; if the turf was included as a right they would put on 5*s.* to 20*s.* or 30*s.*, according to the size of the holding and the convenience of the turf.

5093. The impression, I think, given by your answer was that the landlord went behind the back of the Sub-Commission and recouped himself after a fair rent had been fixed?—As a matter of fact we would have no cognisance of that—it would be behind our back; but I did not wish to give any impression of that kind. It was done, I suppose, openly—the man was within his right at the time—it was his legal right to do it, and there would be no apparent desire to hide it.

5094. The transaction is perfectly clear as I understand—the transaction is simply this: If there is turf you charge 5*s.* or 10*s.* more; if there is not turf you charge 5*s.* or 10*s.* less; and in the cases referred to the landlord was very likely getting 5*s.* or 10*s.* for the turf—that was the transaction, was it not?—That is not the transaction the tenant mentioned when he was struggling to get his turf put in the order. He mentioned the grievance of his neighbour, who, according to his story, had had 2*l.* I think added on to his rent. That is what my remark rested upon, and the public discussion of it in the Court.

5095. Did this come before you only in Roscommon or did you have other cases?—It was Sligo I think the property was in.

5096. Do you know a case in Tyrone of the same kind?—Not altogether of the same kind—I knew a case in Tyrone.

5097. What was the case in Tyrone?—The estate belonged to Colonel Smith and others.

Mr. *Brodrick*—continued.

5098. And what was alleged in Colonel Smith's case?—That although holdings were in the centre of a wide bog which belonged to the landlord, and although they had been in the habit of getting turbary, when they came to the fixing of a rent the representative of the landlord in the Court refused to allow us to include that as a right, although we said we would put on a consideration for it.

5099. I suppose it really was a transition from an allowance to a commercial principle—that was the fact, was it not?—It would amount to that.

5100. The landlord simply stood upon his rights, you maintain, and it became a commercial transaction?—That is all—I do not say or insinuate that he did anything more than that.

5101. In re-fixing the rents which have been fixed for fifteen years now (you have given evidence upon it I know), do you consider that each holding will have to be valued separately?—I think that would be a prudent thing to do. Even where it might not affect the amount of reduction or the rent fixed, it would be a satisfaction to the tenant, and would be more likely to be acquiesced in.

5102. You think an arrangement upon the basis of prices would not be possible?—I think it would not; the proportions of a given commodity fluctuate, even in adjoining districts, so seriously that it would be very hard to deal with them in any way that would give general justice.

5103. Supposing you were re-fixing a rent which had been fixed fifteen years ago, when the time comes, and you found the farm had been sold for a high price with the tenant right in the interval, would that influence you in fixing the price?—I think it would not.

5104. It would not influence you?—I would, of course, be bound to recollect that the tenant's own opinion of the value of the holding might have been marked to some extent by the price he gave; but there are many cases where I think even that much of commercial sense is left outside that I would be very slow to allow either the large price or the small price given to affect my valuation of a holding in fixing a fair rent.

5105. You endeavour to shut your eyes to the prices given for the tenant's right as much as possible?—I would not shut my eyes to anything, but I would be very cautious about letting things I saw with my eyes have a meaning they should not have.

5106. You do not think the two things must be closely connected and indissoluble?—I think they are not; in fact, in my opinion they are not at all insoluble or inseparable.

5107. In fixing the right of pre-emption which you have had to do in some cases, by what have you been guided where there were no improvements?—This relates to the fixing of the specified value?

5108. The tenant right value?—There are two things under the Act which I am sure you are aware of; there is the fixing of the specified value, and there is the fixing of the true value.

Mr. *Brodrick*—continued.

The former applies to places where there is no Ulster custom, and the latter to places where there is an Ulster custom.

Mr. *Sexton.*

5109. Is not this the difference, that the specified value is fixed at the time when the fair rent is being fixed if the landlord so desires?—Yes.

5110. And that the true value is fixed when the tenant is quitting the holding if the landlord desires to buy?—Yes, that would be one of the differences.

Mr. *Brodrick.*

5111. I only want to bring you to this: You do not take into account what has been given for the farm, or you say you hardly take any account of it, in fixing rent. I want to know what you do take account of in fixing the value of pre-emption by the landlord where the farm is to be bought?—We demand from the landlord, whose application it is that we are dealing with, that he will afford us some evidence to go upon, and I think my own Sub-Commission—I am not sure if they do not all, but certainly my own Sub-Commission—refuse to fix specified value unless such evidence is forthcoming.

5112. What sort of evidence?—The landlord would put put up some person in the nature of an agent or auctioneer, or some person skilled in what the value of tenancies was in the neighbourhood, and he would be examined and cross-examined, and the same process would be gone through on the other side on behalf of the tenant.

5113. But you stated in your evidence that unless the holding was demesne land you would not allow the landlord any right of getting it back?—Demesne land or home farm. If he could give any reason to show that he really wanted the holding for himself, I think, perhaps, it would be hard to refuse him the right.

5114. You do not recognise any right then in these cases for the landlord to get back his land even if the tenant wants to sell his tenant right—so that he is to have no right other that that of the general public?—In the cases where landlords have applied to have the specified value fixed, there was no such intention on the part of the landlord shown; and it would be utterly inexplicable why he would want a mountain holding, or a holding in the midst of a lot of others—away from his own place—to take it for himself.

5115. Might not a good landlord desire to protect the incoming tenant from imposition by getting a specified value fixed?—He might.

5116. Would not you feel it right to assist him in that respect?—No; I would rather leave the incoming tenant to take care of himself. If he is a man who has enough money, or enough credit to raise money, he ought to be assumed to be able to take care of himself.

5117. You do not think your duty extends to looking at the effect upon him?—No; certainly not.

Mr. *Macartney.*

5118. Are you quite sure that your memory is accurate about those turbary cases that you were referring to? I do not mean by any means that you are wishing to mislead, but it was some time ago, and information has been supplied to me from those estates which is quite contrary to what you have stated?—I have not any doubt in my own mind at all.

5119. Not any doubt?—Not any doubt.

5120. What I wanted to put to you, distiuctly, is this: Is not what occurred on Colonel King-Harman's estate this—that the landlord's representative would not guarantee the turf, on the ground that the turf banks would not last for 15 years; that in consequence of that the Sub-Commission, in giving their decision, specially mentioned the fact that the rents were fixed in each case 10*s.* less than they would otherwise have been, and that the landlord, afterwards, in each case, imposed 10*s.* as long as the turf would last upon the tenants; is not that the case?—The first part of your statement, I am satisfied, is not correct, if it refers to the sub-commission that I am a member of.

5121. I am talking of all the cases decided upon this property?—I have been on the King-Harman property in that district several times, with intervals between, and they were dealt with on very different principles.

5122. I am taking particular case in point, Boyle.—They are nearly all Boyle. The particular case to which I referred was a case in which I was engaged. On this case there was no statement of that kind made by the Sub-Commission at the close, or as to whether, finally, the landlord afterwards put on 10*s.* or 10*l.*, I had no way of knowing.

5123. The recuperation,—whatever he recouped himself—was not on the rent of the holding. As a rule the reduction is *qua* the turf, is it not?—You may take it that it was a thing perfectly notorious at that particular juncture in the management of the estate, that some tenants who had got reductions had had put upon them a perfectly unusual sum for the turbary afterwards.

5124. Do you say that of your own knowledge?—It was stated, in the witness box.

5125. Do you know any case yourself; I am only asking you; you have told us you heard something stated in Court by a tenant, but do you know of your own knowledge that that was done on that estate?—Do you think it would be possible for me to *know?*

5126. I am only asking you?—Ithink I know of my own knowledge when I heard it stated in the hearing of those whose interest it was to deny it, and they did not deny it it.

Mr. *T. W. Russell.*

5127. Was it proved in Court?—It was proved in Court by a man on his oath.

Mr. *Sexton.*

5128. In evidence?—Yes.

Mr. *Macartney.*

5129. I only want to know how you heard it?—I will let you know everything I know, so far as it is legitimate.

5130. Do you place reliance upon everything stated by everybody in an Irish Court on his oath?—I do not say anything as to that.

Mr. *Sexton.*

5131. There was no contradiction; is that so?—There was no contradiction.

Mr. *Macartney.*

5132. You must not suppose that I am thinking you are desiring to mislead: I only thought that your memory might not be quite accurate. Now with regard to the Tyrone Estate, are you perfectly certain your memory is right about that. I may tell you frankly, I have had a communication on the part of the Office to say that the evidence so far as they could judge from the papers was not accurate. I do not press you any further?—The case is very clear in my recollection; it was so unusual that therefore probably it impressed itself upon me.

5133. Now with regard to the fixing of a fair rent, may I take it that when you are dealing with a holding that has come before you in Court, where the tenant has claimed and has legally proved certain improvements, that then, when you go on the farm for the purpose of estimating the value of these improvements, your custom has been to protect them as far as you possibly could, in your judgment from any confiscation, as it is called, by the rent which is imposed?—Certainly.

4134. Then if there is any increased letting value, which may be the result of those improvements, has it been your custom generally to give (I rather gathered from your evidence that it was) the benefit of the full increased letting value of them to the tenant?—Yes.

5135. Where you could detect it?—Where I could detect it, and where I considered that it was not very permanent, and that it would be only equitable to give it to him.

5136. I rather gathered from your evidence that in your view the percentage given upon the outlay on a tenant's improvement was, in most cases, what would very generally swallow the increased yearly value?—I should think that would be so in most cases.

5137. I rather gathered so from your evidence?—Yes, I think that is so.

5138. I may take it, generally speaking, with regard to the average Irish farm, it would be difficult without a very great expenditure of money per acre, to increase the annual letting value by, say, 10*s.* an acre. I am speaking quite roughly now—I am taking it generally. Take any district you like—say Monaghan, and Tyrone, and Cavan. I am taking the case of farms that have been for a long time in cultivation; I am not dealing now with reclaimed land?—Except in the cases of wet land, naturally of a good quality, I think that would be so.

Mr. *Macartney*—continued.

5139. That it would require a very very large expenditure per acre to produce an increased yearly letting value of 10*s.*?—Well, with the exception I have mentioned, I think so.

5140. With that exception?—I think so.

5141. When you come to deal with very wet land, or with very peaty land, a small expenditure might possibly give a very large return?—Yes; that is so.

5142. But, with those two exceptions, it would be very difficult to increase, and it would require a very large expenditure in your view to increase the annual letting value by 10*s.* an acre? -That would be my opinion.

5143. I think you stated that in so dealing with the improvements and with the increased annual letting value, your custom was the same with every legal chairman that you have served under?—I think so.

5144. Of course, in dealing with your valuation of a holding, before the Sub-Commission as a whole finally close it, you would discuss with your brother Lay Commissioner, and the Legal Commissioner, all the circumstances of each holding?—Well, any circumstances that I thought were bearing on the interests of either side which required special attention.

5145. And especially if you had a difference?—Certainly, yes.

5146. Any difference, with regard to the amount which should be allocated for improvements, with your brother Lay Commissioner, would come before the notice of the Legal Sub-Commissioner?—That would be the practice always.

5147. Then, undoubtedly, if either you or your brother Lay Commissioner had made a mistake, or had not properly allocated a certain improvement as you ought, by the legal interpretation of the Act you would have been corrected by the Legal Sub-Commissioner?—Yes.

5148. That would naturally be so if you had made a mistake?—We would defer to him on legal matters, as he would defer to us on matters of value.

5149. But otherwise than in a case of that sort, you simply went on the holding and you gave what you considered to be a full and fair value to the improvement which you saw there in the tenant's interest?—And that he had proved.

5150. And that he had proved in court?—Yes, certainly.

5151. I may take it that, subject to the infirmity of human nature, you believe that you yourself, during the whole of your very considerable practice, have given the full value; I mean, as I say, subject to the infirmity of human nature?—Yes, I did my best.

5152. Colonel Bayly, in his evidence before us, talked of major and minor improvements, but I think you have told us that you have dealt with all improvements in the same category?—On the same principle.

5153. On the same principle?—Yes; certainly.

Mr. *Macartney*—continued.

5154. You made no distinction between major and minor improvements?—Not in principle.

5155. You have told us that in your opinion the tenant frequently suffers hardship and injustice by reason of the fact that he is compelled to give legal proof of his improvements. Now I want to ask you this: Outside buildings and reclamation, what improvement is there on a holding which in your experience the tenant finds a difficulty in giving legal proof of?—Sometimes a tenant will only have improvements made during his own occupancy of the holding, and part of the holding may have been added by purchase; he comes into Court, without bringing any old neighbour, or any person who saw the improvements made on the section that he had not in his own hands, thinking that his word will be taken, and that, by offering a number of witnesses, that would do. I have known cases of that kind—cases of great hardship.

5156. Are you now speaking of an adjoining bit of land?—Part of an existing holding; I have known cases of that kind.

5157. Part of the existing holding which he has acquired by purchase?—That would be one case; but a difficulty that he would have would be, and an injustice that might result from it would be, to prove the entire of his improvements; he had seen himself, if he is a youngish man, the bulk of them made probably, but some perhaps had been made by his father.

5158. That is exactly it. I want to know what these improvements are that he cannot prove—is it drainage, fencing, road-making, or high cultivation?—High cultivation would not come in—drainage I would say.

5159. High cultivation—we will put that aside?—Yes.

5160. Now about drainage—I suppose in your opinion thorough drainage would consist of a complete system of mains and sub-mains and minors—you would not consider anything else thorough drainage?—I consider it thorough draining, draining when the parallel drains are an equal distance apart, and may run either to a main or sub-main, generally to a sub-main.

5161. You would not consider drainage of sub-mains and minors complete, would you—you would not call that "thorough drainage"?—I have seen what I should call "thorough drainage" where there was only one main drain, the parallel drains running all into it, that drain ending in a discharge; but as a rule there would be sub-mains.

5162. You have told us that you do not often come across complete drainage (I think "effective drainage" is what you said in one of your answers) in Ireland. This is the evidence; I have got it now. 4506. You said in your answer there that a large proportion of drainage was not very effective?—That is a "large proportion" of it?

5163. Yes, a large proportion?—There is another large proportion that is very effective.

5164. What do you calculate thorough drainage costs per acre generally in Ireland, roughly; I do

Mr. *Macartney*—continued.

I do not want to tie you down to a pound an acre?—From 5*l.* to 12*l.*, and I have known it cost as much as 16*l.*

5165. Would that be the case where there were special difficulties with regard to the mains?—Yes; and where the stones were very far off and hard to get, many things go to make it difficult.

5166. Where the stones are far off and hard to get, I suppose they can substitute tiles?—In some cases it is very difficult to get tiles. In some places that are far off the railway carriage adds greatly to the cost; if one stood at 12*l.* it would be high.

5167. It would be high at 12*l.* you say?—Yes.

5168. Would you describe the figure which has been given us of probably from 6*l.* to 8*l.* as an average?—That would represent a great many cases, especially in the boggy districts and so on.

5169. Then what would be the difficulty of proving thorough drainage legally in court, or satisfying you when you went on the land that that had taken place. What difficulty would there be about it?—The absence of any person who saw the work done.

5170. Surely if the drainage was on the farm you could discover it for yourselves?—We would not be allowed to "discover it" unless it was proved in court.

5171. How far back do you suppose that thorough drainage would remain effective in nine cases out of ten, without any maintenance?—I believe the average life of a drain would be about 20 years, and I have known them good at 42 years old, and I have known them to become perfectly inefficient in eight or ten years.

5172. But if it lasted 40 or 50 years it would require very thorough maintenance?—In some cases.

5173. In nine cases out of ten?—Yes, I would think so.

5174. In nine cases out of ten thorough drainage would require effective maintenance?—Certainly.

5175. Thorough drainage and effective maintenance would be very easy for any tenant to prove in court, would it not?—I do not think maintenance of drains comes within the list of improvements. I think a tenant having got his improvement, or the cost of it, is expected to maintain it without any especial allowance for it.

5176. Quite so, but if you found drainage which had been neglected, and was perfectly useless and not ameliorative to the holding, you would not allow for it to the holding, would you?—Not a penny.

Mr. *Sexton.*

5177. It would not be an improvement under the law, would it?—No.

Mr. *Macartney.*

5178. I am talking now of legal proof. If the tenant comes into court and says "40 years ago" (we will take the extreme limit) "my father" (in nine cases out of ten he might very well say) "carried out an effective system of drainage upon this holding, and I have maintained it up to the present moment," suppose he swears that, you go on the farm and find that there is an effective system of thorough drainage, and that it is maintained, what difficulty is there?—He would not be allowed to swear that his father did it unless he saw his father do it.

5179. On what ground do you say that, that he would not be allowed to swear that his father carried it out and that he had maintained it?—Legal evidence relates to what the witness saw.

5180. I am referring now to what his father did, and what he did not see. Can you tell me that any legal commissioner in your experience has excluded a case of that description?—Yes.

5181. Where the tenant said that he had maintained, all the time he was the tenant of the farm, effectively, thorough drainage, which had been made by his father?—I have known a case, and a very striking one, where a tenant said in court he had maintained, and when we looked, we found that he had maintained, and that the drains were in perfectly effective order when we saw them; but he had not given proof in court by anybody who saw them made, and we had to exclude them from his improvements.

5182. Were they claimed by the landlord in that case?—The landlord's son was on the place and objected to the matter being opened unless an application was made for a re-hearing.

5183. In that case had the tenant claimed on the particulars?—He had claimed on his sheet.

5184. He had claimed on his sheet?—Yes, in his schedule.

5185. Who was the legal commissioner?—Mr. Greer.

5186. What county was that in, do you recollect?—I do very well, County Down.

5187. You do not remember the estate perhaps?—I do; I have a little objection to state it, but I am in the hands of the Committee.

Chairman.

5188. Do not mention it if you do not want to?—I think it is unnecessary to mention it.

Mr. *Sexton.*

5189. I think we ought to know where the landlord's son (it being proved that the effective maintenance of the drains had been done by the tenant) objected to the allowance to the tenant?—I think it is so common in the practice of the Land Commission and the sub-commissions that they are confined, that it is known that they are confined to improvements legally proved; this tenant was a strong man and able to fight his own "corner" and did fight it well in all other respects.

5190. What is the practice you refer to?—The practice of confining the tenant to the improvements he proves in court; the strict legal proof.

Mr. *Macartney.*

5191. You have given me a case, and you are quite right, because I was pressing you upon the point; you gave me a case in point, and I want to know from you this: you have been a very long time in the Land Commission; when a tenant comes into court and says: "My father carried out a system, or my predecessor in title, and I say that I know that he did it, and I have maintained those drains effectively"; is it your experience that in that case he is excluded, nobody having claimed drainage?—I mentioned on a previous day the opposite side; I have known many cases where the landlord or his agent in such a case as I have referred to would have said: "Give the tenant the benefit of his work."

5192. I will put it clearly to you; I want to know whether you say that that is exceptional; that is to say, where the tenant comes into court, and says his father made the drains?—He would be asked how he knew, and then he would have to say that he "heard," he could not give legal evidence, and it would not be allowed to be taken.

5193. That he had maintained that drainage?—Yes, that he had made the drains.

5194. And you went on the farm and found it there, and no claim having been made for the work by the landlord, you say the practice of your Commission would be that you would be excluded from considering that?—Yes, except in the case I referred to, where the management is of a different kind, and they want to have the Act fully administered, and wish to give the tenant really what he has done; there are cases of that kind.

5195. Which is the most common form?—I think that is a very common form, especially in the district I was referring to.

5196. Which district is that?—County Down; there are a good many estates on which the point would not have been pressed.

5197. The point would not have been raised on a good many estates, you say?—Yes; I think the tenant would be allowed to get exemption for rent on many of them.

Mr. *Sexton.*

5198. But on many others he would not?—On many others he would not.

Mr. *Macartney.*

5199. In what percentage of cases, would you think?—My object in stating anything about this was that I think in these cases, where the strict rule is held, the law ought to provide that they should be dealt with somewhat on the same lines that their more generous neighbours do; I do not want to blame them.

5200. I am not quarrelling with you; your business here is to give the Committee every possible information, and if I am pressing you upon this point it is only because I think it is important; I hope none of the members of the Committee think I am pressing it unduly. I want to know how far the Sub-Commissioners go. I tell you frankly that I have been often in the Sub-Commission courts, and your view rather surprises me; at the same time, you have much greater experience of them than I have. Now, putting drainage aside, what other improvement on a holding is there which the tenant will have a difficulty in proving or giving legal proof of. For instance, you have told us "high cultivation," you would have no difficulty at all about that?—Oh, no.

Mr. *Macartney*—continued.

5201. Would you have any difficulty about fencing?—Well, in some cases we would.

5202. Why, what sort of fences? Can you suggest any sort of fencing that a tenant on a holding would have any difficulty in giving legal proof of having done himself?—I could, indeed.

5203. Well, what fencing?—Looking at the ordnance sheet we would find the fencing that existed at the day the sheet was made, and the farm on the day we visited it presented a very different picture with regard to fences, a very much improved one. I have known cases of that kind where a tenant was unable to give legal evidence of this work having been done.

5204. Why?—He had not seen it done.

5205. He had not seen it done himself?—Yes.

5206. It was so long ago. What sort of fencing is it you are speaking of now, wire fencing?—Not at all.

5207. What sort of fencing is it?—The ordinary earthen fences, faced with stones, planted with thorn quicks; any sort of fences; this rule applies all round. I wonder there is any doubt about it. The tenant is supposed to be required to prove his improvements in court, and the general practice is that he has to do it.

5208. In these cases you are speaking of how long had the tenants been in occupation of the holdings?—That depends; some may have gone on seven years, some 10 years. I have known men to say, "There are improvements, but they were done before my time, and I could not say anything about them."

5209. And in no district of the town land could any one recollect anything about them at all?—That does not follow.

5210. Then what difficulty would he have in proving them?—The neighbour who had seen the work done might have a delicacy in coming to give evidence in supporting the case lest he should incur the displeasure of the other side.

5211. Now I put it to you distinctly: is it your experience really that the tenants, or the neighbours of the tenant, in court, experience any delicacy, I mean to say, are backward in coming to support his claims?—Only in some cases, but I have known cases of that kind.

5212. May we take it that they are one per cent.; I put it to you seriously. Do you seriously represent to the Committee that the neighbours of the tenant in court have any reluctance in coming forward to support such claims on his behalf as they consider he is entitled to?—I assure you everything I have stated is perfectly "serious," and I have no wish to misrepresent or mis-state the facts.

5213. Then is there any other improvement you can suggest?—These are the most general improvements affecting the value of the land; of course farm roads (and everything else) come in exactly in the same category.

5214. Can you think of any other improvement

Mr. *Macartney*—continued.

ment which the legal occupier of a farm has any difficulty in giving legal evidence of?—I think we have nearly exhausted the improvements.

5215. Your view is this, that whatever hardship the tenant may labour under with regard to this, it would be a good thing to give the presumption entirely in favour of the tenant?—I think that would be an improvement.

5216. You think that would be an improvement?—Yes.

5217. That the presumption was always in favour of the tenant?—Yes.

5218. Without the legal proof?—Yes.

5219. Then how would you deal with it; the court being over, and the improvements having been claimed by the tenant there, how would you proceed with them on his land when you got there?—I would ask him to point them out, and in addition to that use my own eyes to the best of my ability; and then I would try to judge how far they were acting then in adding to the letting value.

5220. Now, do you think it would be fair to the landlord to put any check upon that presumption, or do you think the landlords' interest all over the country would be quite safe?—I think a check could and should be provided, as I have already hinted at, with regard to date, and also with regard to fences which we have been talking about. There is a very common claim in respect of the removing of old fences, and the substituting of others, and also in cases where a holding has been cut into two, the two sons may want smaller fields and more fences; and there is the obverse case where two holdings have been put together; if it appeared that the landlord gained nothing by it, and that it was done to convenience the tenant, I think fences of that kind should be very jealously dealt with before they would be considered as adding to the letting value.

Mr. *Sexton.*

5221. That is a question really of apportionment, and not of presumption, is it not?—It is a question of apportionment.

Mr. *Macartney.*

5222. I may take it that your view of presumption in favour of the tenant is that it ought to be limited and safeguarded?—I would have certain checks, so as to narrow the sphere in which injustice might arise.

5223. With regard to the question of documents in court, do you think that, speaking especially with regard to the small estates, the owners of the small estates are well equipped with documents?—I think they are generally very fairly equipped with records of works done on the estate.

5224. I may take it that a very large proportion of the estates in Ireland have passed through the Landed Estates Court?—There has been a large proportion of them, I should say.

5225. I think you told us that you yourself managed a small estate that had passed through?—No, that had never been in the Encumbered Estates Court.

5226. In the cases that have passed through the Landed Estates Court, do they generally get

Mr. *Macartney*—continued.

documents connected with the estate, do they get anything more than the title deeds?—I really could not answer that; I think it is likely they do not get the documents.

5227. Speaking of owners of very small properties with rentals of 200*l.*, 300*l.*, and 400*l.* a year, I suppose you have had cases of that kind before you?—Yes.

5228. Do you think any owners of that class of property would be equipped with historical documents as regards what had taken place on it?—I think there is a much smaller proportion of the small owners who have laid out money on improvements than even of large owners.

5229. I am not talking of that point, I quite agree with you on the whole about that; but I am talking of documents. Is it your experience that they are well equipped with documents?—I have had very little experience of that, because there were very few cases where small landlords or the owners of small estates had laid out money, and therefore they would have no documents.

5230. In the case where you have told us you were morally convinced that the tenant had undoubtedly carried out the improvement which by some legal difficulty he had failed to establish, would you in a case of that sort be able, being empowered to consider all the circumstances of the case, to make it up to him in considering rent in any other way?—No; we do not consider ourselves at liberty to do anything of that kind.

5231. You would not do that?—No.

5232. And on that point I just want to ask you this. Is 1850 the date you would suggest, behind which no improvement should go?—I think it would be better if you went a little earlier than that; about the time of the famine a great many tenancies became vacant, and then the new people came in.

Chairman.

5233. You say "the time of the famine"?—Yes, I think about 1846 to 1848 would be a better point to start from. I have not made any personal study of the matter, nor am I very familiar with it, but I know that a great many tenancies began since then, and I think the cases where injustice would be done in starting there would be very few as against the tenant.

Mr. *Macartney.*

5234. Then you would take that as a date behind which no tenant could speak?—I mentioned that I would like to discuss it with other people of experience like myself.

5235. What improvement do you suggest; what improvement could there be on a holding now which dated from 1850; what class of improvement?—There are very many districts, and districts of considerable extent, where originally the place must have been practically covered with stones, boulders; these have been gathered to make fences, and the fences are often half the width of this room, mere places for storing up these stones, they are now like fortifications. I think there are many districts where that is evident; those are of very old date.

5236. I had not quite finished my question?—This is a class of things that I think ought to be discussed

Mr. *Macartney*—continued.

discussed with great care by people who are familiar with it before some rule defining, or limiting, or pointing out, should be provided.

5237. What I really was going to ask you was this: what improvement made as long ago as 1850 was now on the holding to the benefit of that holding, continuing to give effect all these years, which had not recouped, or which had not exhausted the outlay?—That is the most striking case, I think, that I would refer to.

5238. Supposing the ground had been cleared in 1860—this is 1894—do you suggest that the tenant, provided he had not been rented on it, would not have recouped himself for it?—I think you must draw the line somewhere, and I would rather stick back at the other other line, and leave that at the discretion of the Commismission.

5239. Do you think it is quite impossible for the outlay to have been recouped?—I would not say it is impossible, but I think it improbable; I think it is exactly a case for practical men to look at, to make an estimate about, have a discussion over, and then to arrive at the best conclusion they could. I think no rule laid down beforehand would work equitably in all the cases.

5240. You do not want to lay down an absolute rule one way or the other; he might be recouped, or he might not, is that it?—I think that is more true than the one or the other.

Mr. *Sexton.*

5241. The existing law allows the tenant to claim for permanent buildings or reclamation of waste lands, no matter when made. Do you propose to limit the existing law by putting a limit of time upon those improvements as to which the existing law puts no limit of time?—I have referred, I think, to only the case of old fences.

Chairman.

5242. Oh! you only meant your remark about the famine as the date to apply to old fencing?—That was in my mind as to the question put to me.

Mr. *Macartney.*

5243. I thought you were dealing with it more generally, as a sort of reclamation, because, of course, you would call clearing land of boulders and rocks a sort of reclamation, would not you; you would deal with it as reclamation?—It would not fall within the definition in the Act, I think, unless the reclamation amounted to bringing land, that never had been tilled before, into a tillable condition.

5244. By reason of the fact of having cleared it of rocks, whoever cleared it of the rocks, and then tilled it, would not you include that?—It would be very hard to say for certain if you saw a number of fences and mounds made up of stones, whether those stones had, as a matter of fact, covered the whole surface, or whether there were cultivable bits here and there through it.

5245. It would be very hard?—The fences are so old, and it is so very long ago since it was done that it is very hard to judge how far the soil was originally covered by the stones.

Mr. *Macartney*—continued.

5246. I suppose you have come across some cases of reclamation where land has deteriorated and gone back owing to the want of maintenance?—Oh, yes.

5247. How do you deal with them?—We try to consider the present increased letting value that results from the work.

5248. Supposing there is no increased letting value?—If there is no increased letting value then the tenant gets no exemption in respect of it.

5249. Does the landlord suffer at the same time?—Oh, no; the landlord would be presumed to get the antecedent value in that case.

5250. Now, I am taking the case where land has been laid down for permanent pasture; grass seeds, for instance; we will say Italian rye and Yorkshire foil, and without any of the real permanent grasses. How do you deal with land of that sort; do you value it at its existing value for grazing land, or do you value it at what it ought to be worth if it had been dealt with according to sound rules of good husbandry?—I think the value we would put upon it would be pretty much the same whether the tenant had put in the better grasses or the worse; if he went to the expense of laying it in with the more expensive and better grasses, he, himself, should have the advantage.

5251. Yes; I quite understand from what you said before, that if he had laid it down with proper permanent, recognised, and best sorts of seeds, you would have to give him the full benefit of the improvement. I want to know how you deal with a case of this sort, where it is perfectly apparent he has not treated it properly?—My opinion would be that the soil which belonged to the landlord had been unaffected, and that the landlord would be entitled to the same rent. I think the soil would not be affected by which of the two classes of grasses he had put in.

5252. I do not quite understand your last answer. May I take it that you deal with the land then, if it has been laid down in an inefficient manner; as if it had no improvable value. I only want to know what the meaning of your last answer was?—My meaning is that a very large number of the farmers, especially in the north, follow a mixed system of tillage; they do not go to the expense of expensive seeds; but they do not deteriorate the land; the soil has been well manured and fairly treated, and the only mistake the man has made is that he has not put in these better grasses. I do not see that that would affect the question of the fair rent.

5253. That is your opinion. How would you deal with a case like mountain which has been reclaimed, where the reclamation has not been properly maintained, and it has gone back to whins, to bracken, or to anything else; how do you deal with a case of that sort?—That would exactly fall within those cases where we try to give the original value, the antecedent value, irrespective of the tenant's work.

5254. You told us in answer to Question 4522, that in 1881 we were at the end of a series of good years. I do not want to pin you to that, but

Mr. *Macartney*—continued.

but I think it is not quite accurate?—I think, moreover, it is not the answer I gave.

5255. Would you like to look at it?—I stated 25 years, beginning from 1855, that brings me up only to 1878.

Colonel *Waring.*

5256. I think it brings you up to 1880; 25 added to 55 would bring it up to 80?—I should say, 1853, the Crimean war. In 1853 and 1854 the prices began to spring; they were very high in 1855 and 1856.

Mr. *Dillon.*

5257. What you meant to say was, was it not, the Crimean War, not the American War?—The Crimean War, it was.

Mr. *Macartney.*

5258. As a matter of fact, the prices of stock went on rising until 1883?—They did.

5259. They never were higher than in 1882 and 1883?—No, I believe that is the top.

5260. I do not want to take you in any way wrong, but I understand that in the early years, 1882, 1883 and 1884, your mind had been taking a retrospective glance upon a series of years in which agricultural prices had been rising higher, and higher, and higher?—My mind was influenced by the 25 years that I have referred to.

5261. There had been a temporary break, I understood you to say to Mr. Brodrick, in 1879, but you did not look upon that as anything more than temporary?—We regarded that as temporary; 1882 and 1883 justified us in that, for they began to go up again.

5262. Just so; in 1882 and 1883 your mind was looking back, so far as prices were concerned; was it affected by the series of years in which there had been a steady increase of prices in every class in Ireland?—That is true, yes.

5263. Then, if that were so, you did not look forward?—Hardly.

5264. No; I understand your mind was, as regards the prices, retrospectively inclined. I am on this point: you said that the rents fixed in 1882, 1883 and 1884 were, in your opinion, too high?—Yes.

5265. I do not say that you are a bit singular, because I understand that most of the lay Sub-Commissioners were looking back like you?—Yes; I think it is very hard to suppose anyone looking forward.

5266. I do not press you to look forward at all; I want to know how it is that, having the retrospective glance over all these years during which there was a steady and continuous increase in prices, the rents were reduced in 1882, 1883 and 1884 by 15 to 20 per cent; not looking forward at all, but having your mind influenced by the years of steady increase of prices, upon what principle did you reduce the rents upon agricultural holdings in Ireland?—Upon the principle that we considered them too high, that is what I suppose led to the legislation empowering us to look to it; and in administering the Act, of course, we had much evidence of increase in rent running parallel with the increase of prices.

Mr. *Macartney*—continued.

5267. You knew that rents generally had never increased for 50 or 60 years?—Yes, I knew of such rents.

5268. And that they had been regularly paid?—Yes.

5269. I mean the tenants were still in existence, and had been, from 40 to 50 years?—Yes.

5270. And the only impression upon your mind with regard to the prices was the fact that they had been steadily rising from 1852 to 1883, and you still reduced the rents?—Yes, but we also thought of the cost; you see a most important factor is the cost of production. In 1882 and 1883 I myself was paying a labourer double what I knew his father to have been paid by my father.

Chairman.

5271. Double?—Double.

Mr. *Macartney.*

5272. About 18*d.* a day?—I was paying him 20*d.* a day.

5272*. Was that in harvest time, or all the year round?—All the year round; and he had a free house.

Mr. *Sexton.*

5273. Then your father paid 10*d.*?—He did.

Mr. *Macartney.*

5274. Did you take into consideration any other facts, like the reduction in the price of feeding stuffs, at the same time?—Oh, yes, I should say so; the cost of labour, the cost of maintaining horses and implements.

5275. You can maintain a horse cheaper now than you could 40 years ago, cannot you?—Not a working horse, where you have to put a man at his head. If I shut him up in a loose box I possibly could, but not if I put a man to him.

5276. You could not maintain him by putting a man at his head alone?—Certainly not; you would have to maintain him and maintain the man as well, and the harness.

5277. Then do I understand that it is your view that since 1885 there has been a steady decline of prices?—I think it has not been great, but I think there has been a decline in the prices of cattle.

5278. What I put to you is this, that the prices of cattle have, since 1885, gone up and down, and been very high and very low?—Yes, that is true.

5279. I do not know whether you have seen a report of the Land Commission of this year, with the schedule of the prices?—Yes, I have it.

5280. You see that all classes of Irish cattle have gone up and gone down since 1885?—I think at present, or in 1892, they were lower a good deal than they were in 1885.

5281. In 1892 they would be lower than in 1885, you say?—Yes.

5282. Do you know how 1885 compares with 1887?—1887 is lower, I think; a good deal lower.

5283. Yes, it is. I have here a table and a paper by Mr. Barrington?—That is what I am

Mr. *Macartney*—continued.

looking at. It is convenient, and I compare it with the Land Commission one; it is very convenient and very interesting to look at.

5284. I see it makes 1892 considerably lower; it is considerably lower than 1885, is it not?—Yes.

5285. Table 3. During these seven years, from 1887 to the present moment, there has been no such thing as a steady decline?—Oh, no.

5286. I mean the prices have gone violently up and down, have they not?—They went up in 1889 and 1890; they appear to have been higher in 1890, at least, in the Dublin market I see Mr. Barrington puts it.

5287. I am talking of your experience all over Ireland; the prices are not confined to Dublin market, but extend to every variety of town, and every fair in Ireland, some are very high, and some are very low?—Yes; taken all over they have varied a little.

5288. "A little"?—A little, yes, a little. Since 1885 are you speaking of?

5289. I am taking the whole year; they were 25 per cent. higher in another year. I am not talking now of the comparison of present prices with 1885; I am taking a series of years that have passed since 1885. All classes of cattle in Ireland have gone up and down?—Yes; but I think not to the extent of 20 per cent.

5290. Not 20 per cent.?—I think not since 1885.

5291. Do you mean to say that they have not varied?—They dropped in 1885 and 1886, and from that to 1887; but judging from *this* and from one's experience who has had the misfortune to try to sell, it has been what I say.

5292. You say it has not been over 20 per cent.?—Since 1885, I think not.

Chairman.

5293. The range of the fluctuations has not been over 20 per cent.?—I think not.

Mr. *Macartney.*

5294. Now, with regard to other farms in Ireland, their prices, with the exception of one or two, have not fallen, have they?—Since 1885?

5295. Take Table 2, for instance, since 1887; you can look at it *there*, Mr. Barrington's report?—That is ewes and wethers.

5296. No; I am on wheat, oats, barley, flax, potatoes, hay, butter, pork, wool, beef, and mutton. I want you to look at those tables?—I think oats and wheat are cheaper at the present moment than they ever were.

5297. Will you look at Table 2; we will take oats. In 1887 they were 4*s.* 10½*d.* per cwt., and in 1892 they were 6*s.* 6½*d.* per cwt. If you look down through the table, according to Mr. Barrington's table, there has been a gradual rise, barley the same; you must know if you have any experience, that barley is very high; there has been a gradual rise in barley from 6*s.* to 7*s.*?—I see there was a series of low prices of oats in 1886, 1887, 1888, and 1890.

5298. But where the prices are going they are rising instead of falling, is not that so. Will you look at the Table 2, Mr. Barrington's: I thought you said you had got it there?—I think that is not Mr. Barrington's you have, is it?

5299. Yes?—Mine is differently arranged. I am looking at Table 2 in the book; I have got the other thing too.

5300. What are you looking at?—Diagram No. 10, where it shows in red and blue and black the movements of prices according to his returns.

5301. This is wheat, barley, and oats?—Yes; they are given there in three colours.

5302. Have you got *this* journal?—I have it; but I have not it here.

5303. I will put it shortly; you may take it in Table 2 of Mr. Barrington's Appendix. There has been since 1887, and inclusive of 1892, a steady rise in the price of oats, and in the price of barley, and in the price of flax, and there has been a rise in potatoes, but it has not maintained itself always?—Yes.

5304. At all events I may take it generally from you that since 1887 prices of all sorts of produce on an Irish farm, whether live stock or cereals or grain crops, or anything else, have gone up or down. In question 4596 this was put to you: "We are all aware, of course, that there has been a very great fall in the prices of all agricultural produce, especially since the year 1885?" And you said: "Yes." Now my point is this; that since 1885 there has not been a continual fall of the prices of all agricultural produce, but that some of them have maintained a steady rise, and in others there have been ups and downs; that is the point I want to make about it?—That is the point. I did not mean to make my starting-point 1885, though I think prices have gone down a little. Start at 1883.

Mr. *Sexton.*

5305. Let us have what you did mean then?—If you speak of the very great fall I would go back further; I would go to 1877 and 1878; but if you are speaking of the prices between 1885 and now, I think the price of store cattle is lower now than it was in 1885; but I would not say "a very great fall."

Mr. *Macartney.*

5306. I think you and I are on two different points; you are comparing prices existing at the present moment, or, as you have said, at the beginning of the year, with something like the prices of 1885?—Yes.

5307. I am taking the general view since 1885; my point is that there has not been a continuous movement one way or the other; that one year it has been down and another year it has gone up high?—My experience is not quite so much of the going up. I think there have been little rises, but the tendency has been rather the other way.

Chairman.

5308. You would say, then, that although there have been fluctuations, yet, taking a sufficiently long period, taking these years, the result as a whole has been a distinct and progressive decline?—I think so.

5309. Are

Mr. *Macartney.*

5309. Are we now talking exclusively of "stores"?—Not exclusively.

Chairman.

5310. When you were asked the question were you thinking of "stores" only or of the whole?—"Stores" particularly, but I think the same applies to grain.

Mr. *Macartney.*

5311. What grain?—Oats and wheat.

Chairman.

5312. Do you say that it applies to all the produce of a farm, including cattle?—The bulk of the produce of a farm, I would say.

5313. Including the cattle?—Including the cattle.

Mr. *Macartney.*

5314. I suggest to you that instead of there being any decline in the price of oats, there has been a steady rise since 1885: do you say there has been a continuous fall in oats?—No.

5315. What do you call the "bulk of the produce of a farm"; do you call pork an element?—Yes.

5316. What was the price of pork, do you know; do you suggest that there has been a continuous fall, or a continuous rise, or that the price of pork has been maintained during the last five years?—I think pork has been one of the most steady of the products that bear much on the question we are inquiring about.

5317. Take the best pork now, and the best pork three years ago; has not there been a very material advance?—I should say so.

Chairman.

5318. Your position is not, as I understand it, that there has been a continuous decline, though varied by fluctuations, in every article of produce, but that taking produce as a whole in all its heads, there has been, in spite of fluctuations, a continuous decline; that is your proposition?—Yes, my proposition is that the rent-paying produce has continued to decline. The proportion, say, that pork bears to young stock has to be kept in mind. The young stock represents a much larger percentage, in my opinion, of what produces the rent than the pork.

Mr. *Macartney.*

5319. Do you know Monaghan?—That is the one county that I never worked officially in, strange to say; but I think Monaghan would be no exception in the matter of prices.

5320. You have told us that in your opinion you would prefer a period of seven years to one of 15 years?—Yes.

5321. And I think you said you would prefer it on the ground that 15 years inferred too much prophecy?—That is one of the grounds.

5322. I understand that in 1881, 1882, 1883, and 1884 you did not look forward at all in fixing your rents; you looked back entirely?—We necessarily looked forward to the extent of seeing whether we could see a sign that there was going to be a change, but as to assuming that prices would turn one way or the other we could hardly do that.

Mr. *Macartney*—continued.

5323. Do you believe that you could estimate seven years better than 15?—I think, if I made a mistake in my estimate, it would do less harm to either side if it were only binding for seven years instead of for 15. It is more that than the other. I think if a mistake is made, and it is stereotyped for 15 years, it is a very serious matter in the case of agriculture in present circumstances.

5324. I suppose you do not pretend to say that you could have foreseen these ups-and-downs, which I suggest have been very serious in Irish cattle during the last seven years?—No.

5325. For instance, take the fall of last year, which was very serious. About eight weeks before Ballinasloe fair there had been a small, steady, perceptible rise in cattle; do you remember that?—Yes, I think I remember seeing something of the figures.

5326. There was a considerable trade going on at the time; then Ballinasloe came and there was the crash?—Yes.

5327. You admit that; could you have foreseen that crash?—No, that is why I object to being so much influenced by those small fluctuations.

5328. Then I may take it that the only reason which biases your mind in favour of seven instead of 15 years is that less injury may be done by the rents you fix?—There is less risk of injury, that is the way I put it.

5329. There is less risk of injury?—Yes, or injustice, whichever way you prefer to put it.

5330. I think you have told us that in your estimation there is no fixed proportion, and that there can be no fixed rule laid down for the proportion which the rent of a holding ought to bear to its gross produce; am I right in assuming that that is your view?—I believe that no scale could be laid down that would apply.

5331. I quite agree with you, but I only wanted to know whether that was your view?—Yes, it is.

5332. It has been suggested in evidence here that there is a scale laid down in England; I need not ask you about that, because I suppose you have no professional acquaintance with any agricultural experts in England?—Oh, no.

5333. Is your opinion that it would be impossible to lay down a fixed proportion?—That is my opinion.

5334. Applicable to every case?—That would be my opinion, decidedly.

5335. It must depend, I suppose, upon the circumstances of each case?—Quite so.

5336. And the circumstances of the holding?—Quite so.

5337. On the question of sub-letting, I think you confined yourself entirely to corn mills; you said you knew nothing about scutch mill holdings?—I know a good deal about scutch mill holdings, but I know no cases of that kind.

Colonel *Waring.*

5338. You heard just now an assertion made that the prices issued by the Land Commission were neglected altogether as being valueless; is that your opinion?—I think they are interesting and useful to look at.

Colonel *Waring*—continued.

5339. I mean as to their reliability; do you believe them to be reliable prices?—I would say this about all returns of prices. If they are made out uniformly they do as well for purposes of comparison if there are defects in them, supposing the defects follow on all through.

5340. That being so, you have the Land Commission prices; an average of the seven years, from 1887 to 1893?—I have them, but not here before me.

5341. You have the Land Commission prices from 1887 to 1893?—Yes.

5342. And the first quarter of 1894?—Yes; the "quarter" is, I think, rather too minute.

5343. We will exclude the quarter?—Yes.

5344. Now, with regard to this question of proving improvements; you say the landlords, as a rule, have kept the books?—The landlords who have made improvements.

5345. Now, does it not appear to you as a possible case that the landlord may have failed to demand the consideration of the improvements, because he knew he had not the legal evidence to prove them, although he was perfectly well aware of the fact that they had been made by him?—I have no experience of that kind.

Colonel *Waring*—continued.

5346. Are you aware that it was a frequent practice to give timber and slates and the large poles from plantations to tenants freely?—I have known many cases of that kind.

5347. In answer (I think it was) to Mr. Brodrick, you said that the difficulty of treating Griffiths' valuation as any guide at all was largely on account of the buildings being included in Griffiths' valuation?—I mentioned that as a fact that might mislead.

5348. As a matter of fact have you not very often of recent years fixed values very much below Griffiths' valuation exclusive of houses?—I think we have in the north, certainly, and probably in other parts. I have mentioned before that I do not, myself, use it.

5349. You place no value upon it?—I have seldom made a comparison with it, for I have no great respect for it.

Mr. THOMAS MACAFEE, called in; and Examined.

Chairman.

5350. YOU are an Assistant Lay Commissioner?—Yes.

5351. For how long have you held that office?—October 1889 I was appointed.

5352. Only since October 1889?—Yes.

5353. That was your first employment in the Land Commission?—Yes, it was.

5354. What experience had you had as a practical farmer yourself?—Since I was 20 years of age I have farmed up to about 200 acres, besides grazing occasionally outside my farm.

5355. In which part of Ireland?—In the County Antrim.

5356. Altogether in the County Antrim?—Yes.

5357. All your practical experience is there; where have you been principally employed since 1889?—I have acted as a Sub-Commissioner in six counties, and I have acted as appeal valuer in seven.

5358. Which counties?—I have acted as a Sub-Commissioner in Down, Armagh, Monaghan, Louth, Meath, and Roscommon.

5359. Then as appeal valuer?—In Tyrone, Wicklow, Kildare, Carlow, Kilkenny, Leitrim, and West Meath.

5360. Under what legal chairman have you generally worked?—Altogether under Mr. Bailey, with the exception of three months under Mr. Kane.

5361. Do you mean the Mr. Bailey who has been heard here?—Yes, Mr. W. F. Bailey,

5362 You have heard some of the evidence of Colonel Bayly, and all the evidence I think of Mr. Cunningham?—With the exception of the first day.

5363. That was very short; you have heard substantially the whole of Mr. Cunningham's evidence. Now have you got anything further to tell us as to the method you pursue in inspecting and valuing farms as an Assistant Commissioner?—I did not hear Mr. Cunningham explain minutely the manner in which he dealt with the inspection of the holding, but if the Committee cares to hear it I would give a detail of how we as Commissioners deal with it, at least my own personal manner of dealing with it.

Chairman—continued.

5364. Will you tell us very shortly how you go to work?—The first thing we do is this, we have the Ordnance sheet provided.

5365. We know all that, we will take all that as we have it, and all about the first paper and so forth.—There is one thing that occurred to me reading in the papers Colonel Bayly's evidence.

5366. I do not want to interrupt you, but we do not desire your opinions or views upon anything said by Colonel Bayly; what we want to know is really this, to put it very shortly; we know all about the pink paper, the Ordnance map, and so forth; we want to know, first of all, how you look at the tenant's improvements?—I might say that what I was going to explain was how we find out the boundaries if we have not a representative of the landlord present; and how we deal with the holding before the court. I do not know that the Committee have, as far as I can see, had explained to them how we deal with that.

5367. Very well; will you, please, tell us shortly?—The manner in which we deal with it is this: If the landlord's representative is not present, the tenant points out his holding; we have taken on oath, and from the originating notice, a certain number of acres in court; immediately after the inspection of the holding and putting the red line round it we scale it before leaving the holding with a scale which we can

Chairman—continued.

can provide ourselves with; and we can come to a very close or very accurate opinion as to whether that is the correct amount which has been taken in court or not; if we find it differs to any extent from the acreage we have taken in court, we then write to the landlord or the agent, saying that the holding had been pointed out by such and such a tenant, and that the property does not agree with the acreage taken in court, and we ask the landlord to substantiate the acreage taken in court and show whether it is the correct acreage or not; we do it by means of these scales, and we can do it on the spot, and I think it should be done in every case before the holding is left.

5368. I wish you would explain a little more clearly; I am not sure that I understand what it is you are priding yourself upon?—The first thing we are asked to do by the Chief Commissioners is to mark with a red line on the Ordnance sheet the boundaries of the holding. So soon as we have that done we take this scale, which shows in statute acres the size of the holding, and if we find on the farm before we leave that it does not agree with the acreage taken in court we take a special note of it, and before we fix the rent we make either the landlord or the tenant produce the survey or satisfy us that there was a mistake made with regard to the holding. If the landlord finds there was a mistake, it may be from the fact that the tenant has left out a field, or shown us a field he should not have shown us, in that way we can always arrive at whether we have the accurate holding if the landlord's representative is not present.

5369. Well, I do not gather that your method of going to work differs from that of the two gentlemen we have heard before?—I do not say that it does, I am only explaining my own method.

5370. Now, a point I want to ask you about is your way of looking at improvements. How do you set to work in examining improvements?—We take the evidence in court with regard to the improvements, we examine carefully into the improvements when we go on the holding; if it is an improvement that we think is entitled to 5 per cent. we allow it; if it is an improvement that we think is a short-lived improvement, and that more should be given, we take it into account.

5371. Suppose the improvement has added more than 5 per cent. to the letting value of the land, how do you do then?—The landlord gets the benefit of the increased value.

5372. You give the landlord the benefit of the increased value, do you, of the tenant's improvements over 5 per cent. on the outlay?—Generally speaking.

5373. The whole of it?—Yes.

Mr. *Sexton.*

5374. Over what repays the tenant the cost of producing it?—Yes.

Chairman.

5375. About prices; do you have regard to prices in fixing a fair rent?—Yes, we keep generally before our mind the effect price has on rent I may say that the way in which I deal with prices of farm produce is from personal experience, because I farm 175 acres at the present moment, which is a mixed tillage farm, and which gives me a very good idea of the prices of farm produce generally, and all classes of stock, and I had, before I joined the Land Commission, and up to the day I joined the Land Commission, a pretty large knowledge with regard to the prices of farm produce, because for 20 years I had dealt largely in them outside my farm.

5376. And you have found that experience of yours to have been of great value to you in your Commission work?—Certainly; I consider it has been of the very greatest service to me.

5377. It must be very difficult for the lay Commissioner to value unless he is constantly brought into contact as you may say with the fluctuations in price and the changed conditions or otherwise of the farm?—I can only speak for myself, but I consider it of absolute value to me to have to deal every year with farming, and I think it is one chief way in which any man can keep in touch with the times.

5378. Yes, I quite see that. How do you manage as to doing this? Is not a lay Commissioner an official employed all the year round?—Certainly.

5379. Well then, how is the lay Commissioner to keep in touch with his own farm and his own farming operations?—Well, I have a very good man to look after the work of my farm; I keep in touch with my own bank account, and I generally know what my produce has sold for and what it has cost me to put in my seeds and everything else every week of my life.

5380. I only meant this: I can suppose that there might be some difficulty in conducting all your official work and at the same time looking after your private farm?—I devote my attention to my official work, but I have always letters from home every week.

5381. Do you hold that there is a need for inspection of the particular holding in every case?—I do. I hold that view very strongly. I think it is seldom that you get any two holdings that will agree together in every particular.

5382. Then it would seem to follow from that that you could not have any general automatic kind of rule of valuation?—Certainly not. I fixed a rent on two holdings last week for one tenant; to show the very great need that there is for inspection, we reduced the one holding from 18*l.* to 8*l.*, and we confirmed the rent on the other one, across the fence.

5383. You mean the circumstances of the holdings were so different?—Yes. We could not tell why it was the rent was so high in the one and so moderate in the other.

Mr. *Sexton.*

5384. Was it complicated with any question of improvement, or was it only a question of rent?

Mr. *Sexton*—continued.

rent?—There was no complication in it at all more than in any ordinary holding.

Chairman.

5385. Can you tell us anything about a case of which we have heard something, the case where improvements were made but not claimed; have cases of that kind come within your experience?—Yes.

5386. Many?—A very great many.

5387. A very great many cases in which the tenant did not claim for improvements though he or his predecessors in title had made them?—Yes; there is one case particularly before my mind, not far from Banbridge, where the tenant, through an error, did not claim for his improvements. It was a stiff clay farm, and when we went to inspect it we found it all thorough drained, and remarkably well drained; but as the holding was over 10*l.* valuation and the tenant had not claimed them on the back of his notice, the landlord's solicitor objected in court to allow him to claim them; we went on the holding and found that without these drains it would have been a very poor farm, and we put a special note in our pink report stating the reason why we did not make any allowance for them, but stating at the same time that they existed, and were all in good working order.

5388. In most of these cases did you make an allowance or not?—We did not make any allowance unless we were entitled to do it; that is to say unless we were entitled to do it by the improvements having been proved in court.

5389. What rent did you put on?—I can tell you the rent we put on, but I did not go into the question thoroughly with regard to what we would have allowed. The farm was 33 acres and 32 perches (33a., 0r. 32p.); the old rent was 49*l.* 13*s.* 9*d.*, the poor rate valuation was 48*l.* 5*s.*, and the rent we fixed was 25*l.*

5390. You cut it down from 49*l.* 13*s.* 9*d.* to 25*l.*?—Yes.

5391. Nearly to one-half?—Yes.

5392. Or rather to slightly more than one-half?—Yes.

Mr. *Sexton.*

5393. In that 25*l.* which you allowed for rent there was the full letting value of the drainage made by the tenant, was there?—I might be wrong in saying that there was. I may just as well say that we considered it was such a hard case that we had more or less sympathy with the tenant, and while we did not actually make any definite allowance for the improvements we fixed a moderate rent on it.

Chairman.

5394. Then it did really affect your minds?—Yes, it did.

Mr. *T. W. Russell.*

5395. Although not legally?—But not legally.

Chairman.

5396. And although by the law it ought not to do so?—It ought not; but I am admitting honestly what was the case. It was a case where the tenant was in abject poverty; the sheriff had been with him two or three times before we visited the farm.

Mr. *Macartney.*

5397. This was last week, do I understand?—It was about six or nine months ago.

Chairman.

5398. Have you anything else to tell us, for instance, about cases dismissed for sub-letting?—Well, we have had a number of cases. I remember one or two in particular, and quite close to this particular case that I have mentioned just now, which we heard at Banbridge.

5399. Banbridge is in Down, is it?—Yes, it is. We dismissed a case last summer of one holding because there were four small houses on it filled with handloom weavers, and the tenant lived on an adjoining farm. In very many cases we find that a tenant may purchase a farm on which there is the dwelling-house of the previous tenant, and he lives on an adjoining farm; he does not like to pull the dwelling-house down, but he immediately fits it up for two or three cottier tenants.

5400. You did not hold that to be a trivial sub-letting, did you?—No, it was a small holding, and the rent he was getting for the cottier houses was a good part of the letting.

Mr. *Macartney.*

5401. What was the acreage?—Somewhere about 12 to 15 acres.

Chairman.

5402. Have you any other case in your mind?—Yes, we had a case heard at Armagh about two weeks ago. We heard it since Mr. Bailey came over from London. We sat without Mr. Bailey and heard some cases, and this was held over because there was a point of law in it. Mr. Bailey said the application would have to be dismissed on account of sub-letting. The tenant owned a factory adjoining, and on this he had built some workers' houses, because he was away from any town where the employés could get houses, and it was absolutely necessary that he should provide houses for the hands that he required, and on this particular farm he had built a portion of the workers' houses, some 12 or 13. We always make it a point when a case is heard where there is any difficulty about a point of law, first to discuss it with the Chairman, to make him decide whether it it open for us to fix a rent upon it or not; we take a note in our note-book at the time.

5403. You report to him after inspection?—We go out to inspect the holding, having this note with regard to how he directs us to deal with it; we come in and report what we have seen

Chairman—continued.

seen on the spot to him, discuss the question, and decide whether the rent will be fixed or not.

5404. This factory I do not quite understand?—The man has got a holding where there was a factory just adjoining.

5405. Not on the holding?—Not on the holding.

5406. What he did was to build some cottages on his own holding for the convenience of workers in the factory adjoining?—Yes. I must explain. He not only had this holding that we were going to deal with, but he had one or two more. Where the factory was built was held in perpetuity, and a portion of ground adjoining the factory he had built a house upon. It was only a small piece of ground apparently, and adjoining this quite close was the holding that we were dealing with.

5407. The holding as to which he had filed the originating notice?—Yes; on it he had some years ago built a few houses.

5408. What for?—For the workers.

5409. For the workers in the factory?—Yes.

5410. And on that ground you disallowed his application?—Yes. I think the holding consisted of somewhere between 35 and 40 acres.

5411. In fixing a fair rent, what do you do about proximity value or accommodation value?—Well, I cannot understand how proximity value and accommodation value, come into any one case. We have always dealt with proximity value alone with regard to a holding which lies adjacent to a town.

5412. Of course you are familiar with the town park exclusion?—Oh, yes.

5413. Is what you just told us about proximity value and accommodation value on the point of town park?—Yes; it is where we deal with land quite close to a town. Proximity value is a thing which varies very much, because according to the size of the town we vary the amount allowed.

5414. Yes, to be sure, but I meant rather more than that; in fixing a fair rent on a holding quite near a town, the question of town park being included, you take proximity to a market, for example, or to a railway, into account?—Yes, we do, if we consider that it is a market town that is entitled to be considered.

5415. Upon the point of a relation of the rent to the gross produce, have you anything to say?—Well, I must say that I have not gone into the thing so closely that I could say whether it is a third, or a fourth, or a fifth, or any other proportion. I bring my practical experience to bear upon it as far as I am able to.

5416. Surely your practical experience has given you some kind of a formula, has it not?—Yes.

5417. That is the point?—The way in which I fix a fair rent is this: I go on a farm, and into every field; I examine the soil and the subsoil, and from my practical experience, gained since I was twenty years of age, I form an opinion

Chairman—continued.

with regard to what that soil is capable of producing.

5418. Your practical experience enables you to estimate what its probable gross produce will be. Then my question is this. Has your practical experience given you a figure (a fraction) describing what generally ought to be the average relation of that gross produce to the rent?—Well, to arrive at that you would require to deal with every case separately.

5419. That is what you do then?—Yes.

5420. You have not, in your mind, a general figure?—No definite figure.

5421. Neither a fourth nor a fifth, nor anything else?—No, no definite figure of a fifth or anything else. We have to deal with cases differently situated, and differently affected in many ways, both with regard to the formation of the farm, with regard to its distance from a market, with regard to the difficulty of tilling it, and its possible yield.

5422. Then you mean this, I suppose; that gross produce is not a decisive factor or element in your view of a fair rent?—No, you cannot deal with the gross produce without dealing with every other question connected with the production, and so forth.

5423. No, that I understand; still I should have thought that your experience would have led you to have in your mind a general average relation of gross produce to rent?—Well, I know what my own farm costs, and I have to bring it to bear more or less on what I consider is the proportion.

Mr. *Sexton.*

5424. Would you give us the particulars of your own farm?—It is only roughly that I can do it.

Chairman.

5425. Without telling us anything you do not want to tell us we should like to have some information as to that?—My rent is somewhere about 138*l.* a year; it takes, roughly, about 200*l.* to work my farm.

5426. Of how many acres does it consist; of 150 I think you said?—One hundred and seventy acres, 171 or 172.

5427. £138 rent, and it costs you 200*l.* to work, you say?—Roughly speaking, it costs 200*l.* to work.

5428. I mean 200*l.* working expenses?—Yes.

Mr. *Leese.*

5429. Do you mean 200*l.* working expenses?—Yes. I may say I have about 50 statute acres in cultivation each year.

Chairman.

5430. Your 170 acres are Irish acres, are they?—No, statute acres. We have always to deal with the acres as statute acres.

5431. Now

Chairman—continued.

5431. Now, taking your own "acres," the gross produce amounts to what?—That is a varying quantity. I generally stall-feed cattle, and we have more or less pork; we seldom sell any oats; we consume them on the holding. I rear one or two young horses; one year I may have a horse to sell worth 50*l.*; another year I will have none; but taking it roughly last year I had somewhere over 300*l.*

5432. Your working expenses, *plus* the rent, are 338*l.*?—Yes.

5433. And your gross produce, roughly, is what?—The gross produce, roughly, was under 400*l.* last year.

5434. Then you have to pay out 338*l.* as it were?—Yes.

5435. Then there is a fraction, though I cannot work it out in an instant, which will describe the ratio of the 400*l.* gross produce to the 138*l.* rent?——

Mr. *Sexton.*

5436. It is about one-third, is it not?—I do not consider that my farm, as I have to deal with it, would be a fair thing for the farming community generally.

5437. Is your rent judicial?—Yes, chiefly judicial. I got one holding a few years ago that is not judicial; I got it direct from the landlord.

Chairman.

5438. That is under agreement, the one holding?—Yes; in that I have three holdings.

Colonel Waring.

5439. You have very nearly answered one question I was going to ask you this moment. I was going to ask you whether if you are absent from the farm it goes on as well as it would if you were present?—I do not think it does.

5440. In fact you do not differ from other people, you cannot serve two masters; you cannot serve the Land Commissioners and your own land at the same time?—Certainly, personally I cannot.

5441. You do not hold your own farm to be a fair specimen of farming generally?—I have just stated that.

5442. You have just said it; I need hardly therefore ask the question. One other question before I hand you over to Mr. Macartney; you have stated that there are four cottier houses at Banbridge, what is the acreage of the holding?—Twelve to 15 acres.

5443. We will not be particular to an acre or two. What proportion of rent do these houses pay?—So far as I can recollect, the houses paid within 2*l.* or 3*l.* of what the tenant was paying for the entire holding.

Mr. *Macartney.*

5444. What class of tillage land is it that you have under the plough?—It varies very much.

Mr. *Macartney*—continued.

5445. Suppose you were now going on it yourself as a sub-commissioner, what sort of rent would you put upon it?—I had a rent fixed on 75 acres of it by a Sub-Commission the year before I joined the Land Commission.

5446. What rent did they fix?—They fixed about 75 acres at 56*l.*, and about 12 or 15 acres of it was not worth more than 2*s.* 6*d.* an acre; a piece of rough ground.

5447. That is a piece of your tillage land?—Yes, that is one of my holdings.

Mr. *Sexton.*

5448. What did they take off?—What did the sub-commissioners take off?

5449. Yes?—They reduced me from 80*l.* Before 1881 I had about 25 per cent. added on; they took off 4*l.* from what was the rent 10 years previously.

Mr. *Macartney.*

5450. You have told us that you take proximity into account in fixing your rents; that would depend entirely upon the size of the town, and its importance as a fair and market, I suppose?—Yes.

5451. You fixed some rents, I think, near Moy?—Yes.

5452. Did you allow anything for proximity there?—Yes.

5453. Taking Moy, would you consider that at the top on your percentage for proximity?—Oh, certainly not.

5454. I only want to know what sort of town you take?—We do not look at Moy as entitled to be anything like a type of proximity value, for the simple reason that Moy is only famous as a horse fair, and that is held once a month.

5455. It deals largely with horses?—It is chiefly with regard to produce, hay and straw, and oats.

5456. You would give a far higher value at Dungannon than at Moy, I take it?—Oh, certainly.

5457. In the case where you had evidence in County Down, where the tenant on whose land you went failed to give legal proof of the improvements, I take it that no substantial injustice has been done to him?—Oh, yes; I think there has been. If the tenant had proved his improvements we would certainly have given him credit for 5 per cent. upon them, and I am perfectly safe in saying he did not get credit for 2 per cent.

5458. What was the extent of the farm there?—It was a farm of 33 acres and 32 perches. I should state that it was very stiff, heavy, retentive clay.

5459. And what drainage?—Drainage altogether, and it was very well done.

5460. It would cost about 10*l.* an acre I suppose?—That I do not know; we seldom give more

Mr. *Macartney*—continued.

more than 5*l.* an acre, that is if the drains are old drains.

5461. Were these old?—They had been made for a number of years.

5462. And they were effective?—They were working when we saw them.

5463. And, in your opinion, was it only stiff clay, do you say?—Yes, it was a stiff, retentive clay.

5464. Thorough drainage?—It was apparently "thorough" drained, with the exception of a very few acres.

5465. Was it the fault of the solicitor that the improvements were not claimed?—It seems that was due to an error on the part of the solicitors in not putting them on the back of his notice.

5466. Apparently the solicitor ought to come in for his share of the difference?—When the question arose as to whether we could waive the error, the landlord's solicitor objected, and the chairman ruled that as they were not on the back of the notice, and as the landlord's solicitor objected, we could not allow them.

5467. I suppose it is the general tendency with gentlemen of the legal profession to take every point they can?—Yes, we had a number of cases just about a week before I left for this Committee, where a lot of improvements had to be left out simply because the tenants could not prove them.

5468. When you go on the farm dealing with improvements that have been claimed and proved in court, do I understand from you that you endeavour to completely protect those improvements from any confiscation, or that you do not fix rent upon them?—We always make it a point to examine very carefully into improvements to see whether the money has been judiciously laid out, and whether the tenant has kept the improvements up. We have always decided not to allow for improvements where we have found the tenant has made drains and so forth, and that they have got choked up and become useless; in fact I might state that I have been on holdings often where the tenant claimed several hundred perches of drains in court, and when we asked him to point them out on the farm he failed to do so; in that case we allow nothing, we take the land as we find it.

5469. I am now taking a case where the improvements have been claimed and proved in court, and you find them on the farm. Do you deal with them in such a manner as to protect the tenant from being rented on them, and from any confiscation of these improvements?—Yes, in fixing the rent we do; we value the land as we find it, and we give the tenant credit for all the improvements he claims if we find them to exist.

Mr. *Sexton.*

5470. You mean credit for what it cost him to make them?—Yes; for what it cost to make them.

Mr. *Macartney.*

5471. You calculate the capital outlay, and then you give him a percentage on it?—We give him a percentage on that; but we consider the question whether he has laid out his money properly, and whether it represents what he claims.

5472. And so you, having come to the conclusion that he has laid out his money properly, give him interest on that?—Yes; that is made clear to us on inspection.

5473. How do you deal with the increased letting value which has been added? We have had evidence from other Sub-Commissioners that in nine cases out of ten they give the whole of that to the tenant; do I understand that that has been your practice? The two previous Lay Commissioners who have been here have both told us that in addition to whatever interest there may be upon the capital outlay on the tenant's improvements, they give the tenant the benefit of the increased yearly value. Do you, or do you not, give the tenant the benefit of the increased letting value?—If we go on a holding where the tenant claims that he has spent 5*l.* an acre on his holding, we give the tenant credit (if we think he has carried out that improvement thoroughly) for 5*s.* an acre; and if he has made it worth 10*s.* an acre, the landlord gets the other 5*s.*

5474. Therefore I take it that it has not been the practice of you and your colleagues to give the tenant the benefit of the increased letting value?—No, certainly not. If it is a short-lived improvement that we consider well done, we may allow him more that 5 per cent., because he has a shorter number of years in which to be recouped for his outlay; but if it is a permanent improvement that will last for an age or ages, we will give him a lesser rate of interest; but we only give him whatever rate of interest we think right, taking into account the nature of the improvement, and the money he has expended and any increased value that may accrue from it.

5475. You do not confine yourself to 5 per cent., do you?—No, we do not.

5476. You may go up to 12?—Yes, and we may go down to 3 per cent.

5477. Do I take this from you: That in no case do you give the tenant any portion of the increased letting value?—No, I never have done it.

5478. Have you always been on the same sub-commission?—I have always been on Mr. Bailey's Sub-Commission, with the exception of three months.

5479. Who are the lay Sub-Commissioners who work with you?—I wrought first with Mr. Headech, afterwards with Captain De la Poer, afterwards with Laurence Byrne, and, I might say, almost all the time with Charles W. Thompson; he came to me at Drogheda when he was appointed.

5480. But your legal Commissioner has always been Mr. Bailey?—Yes, with the exception of three months with Mr. Kane.

Mr. *Macartney*—continued.

5481. How did you arrive at this distribution of the increased letting value?—I do not consider the question of a distribution of the increased letting value at all. We take the evidence with regard to the amount of money expended on a holding; we examine the holding as we find it; and, as I have already stated, we give the tenant credit for his outlay if we think he has laid the money out properly.

5482. I want to know this: Do you distinguish in your own mind, in any way whatever, or does your Sub-Commission distinguish, between outlay upon the improvement works and the increased letting value which those improvement works may add to the land?—No further than I have stated.

5483. As I understand, the Sub-Commission do not distinguish at all. You have told me that you go on the farm, you value the improvements, and you give the tenant a full percentage on those improvements?—Yes.

5484. Then am I to understand that your Sub-Commission distinguishes, at the time that you are all three together, settling what the rent is to be (your lay Sub-Commissioner, yourself, and your legal Sub-Commissioner), in all the cases, or in any case, where improvements exist on a farm between, first of all, the outlay on the improvement works, and secondly, the increased letting value of the land?—Well, I have given an answer, and it is the only answer I can give, and I may say that the way we deal with the improvements is this: my lay Commissioner colleague and myself value each section of each farm which we have to classify at a price; we put it down independently in our books, and we afterwards scale it off at each price; but there is one thing we always make it a point to do, that is, we always consult together on the holding before we leave it with regard to improvements, how much we should deal with, and how much we should allow; and we never take into account the question of the increased letting value, but we allow, as I have already stated, for the improvements proved in court at so much per cent. if we think the money is properly laid out; and if it increases the value of the holding beyond what we allow the landlord gets the benefit in every case.

5485. I quite follow you in your answers, but pardon me for saying that your practice according to your answers is inconsistent. Your answers appear to me diametrically opposed to each other as to the practice of your Commission?—They may be.

5486. You say you go on the holding and value the holding with the tenant's improvements, and give the tenant 5 or 10 per cent. interest, or whatever it may be, upon his improvements; then in another answer you say that if there is any increased letting value above that, you give 5 per cent. of that to the landlord?—Oh no, I certainly did not say that. We do not give a particle of any percentage, over the percentage allowed to the tenant on his outlay, to the tenant.

5487. Then, do I understand from you that if there is an increased letting value resulting from these improvements, that goes entirely to the landlord?—Certainly, so far as we are concerned; but I may say that it is seldom that we get a case of that kind; we only get it on very good bog-land, that is, bog land on a clay sub-soil where the tenants who cut the turf off have been made to leave the soil, or the remnant of the soil, for future cultivation in a judicious manner by the landlord or his agent, or in some swampy or wet lands, as Mr. Cunningham has already explained.

5488. Then I may take this from you that the practice of your Sub-Commission would be this, that if you went on a holding of which there were (we will take it) 50 acres, I will take it of tillage, or take part of it, if you like, laid down in grass, and you were satisfied that on hat holding the tenant had expended 10*l.* an acre in drainage, high cultivation, or in laying down proper pasture, and that the expenditure of the tenant had improved the letting value of that holding (we will say) 10*s.* an acre, you would merely give the tenant the interest upon the capital sum laid out in the improvement works, and the whole of the increased letting value would go to the landlord?—Yes, but if the tenant by an outlay of 10*l.* has only increased the letting value of that holding 10*s.* per acre (as you said in your quotation) we have to allow the tenant 5 per cent. on that, which leaves nothing over and above to the landlord.

5489. You might, in the percentage which you give to the tenant, heap up the whole of the increased letting value?—Oh, yes, if the tenant proves clearly that he has laid out 10*l.* an acre on his holding, and we on an inspection find that he has laid out that 10*l.* an acre judiciously, and that it has only increased the letting value of that acre by 10*s.* the tenant gets the entire credit for that, because that is 5 per cent. on his outlay of money; but there is one point of your question that we do not consider in the question of permanent improvement, and that is high cultivation.

5490. I did not say that it was considered?—But you mentioned it.

5491. Yes, but I am not talking of permanent improvements at all?—With regard to the question of high cultivation or low cultivation, that is one element we take very particularly into account, and in the case of deterioration we value the holding accordingly. If we find the tenant has been overcropping it for years and not manuring, we take into consideration as far as we are able the value of the holding in its normal condition and not in its deteriorated state; but we always put on the pink report that we have done so for the guidance of the valuer who may go over it after us in case of an appeal. With regard to high cultivation, if the tenant has been cultivating his farm in a very high-class manner and has been filling it with manure, and we find it carrying crops rather beyond what it would under ordinary cultivation, we do not rent the tenant on his high cultivation so far as we are able to judge.

5492. It

Mr. *Macartney*—continued.

5492. It would be an important element which you would consider?—Yes.

5493. For which the tenant ought to get some benefit?—Yes.

5494. That is the only reason I mention it?—We do not think it fair to rent the tenant on one side of a fence on his high cultivation higher than we rent the tenant farming on the ordinary mode of cultivation on the other side, when he has not such heavy crops on the same class of soil.

5495. I only mention that as an element in the case I put to you because I want to make this quite clear. In fixing the percentage which you give the tenant for his outlay on the improvement works, do you or do you not fix that percentage so that he may have the full annual benefit of these works?—Yes, where that percentage does not do more than cover the increased value of the holding we certainly give it all to him.

5496. I wanted to know this; of course it is perfectly open to an agricultural valuer to have different ways very often of getting at the same thing; and the system you have described here is certainly (to my mind at all events, and I am not speaking of anybody else on the Committee) very different to that which has been described by Colonel Bayly and Mr. Cunningham?—I do not know the system of any other one. I am describing as well as I can the system on which we deal with it.

5497. I am not in the least finding fault; but agricultural experts may often arrive at the same ends by different methods, and I wanted to find out from you whether in fixing the percentage you give to the tenant on his improvement works, you fixed any percentage, having regard to the fact that you desired to give to him the full benefit of the annual value of them?—Yes, so far as there is a return for his outlay.

5498. Upon this question of improvements, I think you have told the Chairman that you have found that there has been some hardship in the view of the tenants. Mr. Cunningham has suggested that the difficulty might be got rid of by fixing a date; he did not fix it, but he suggested that the difficulty might be got rid of by fixing a date down to which the presumption should be entirely in favour of the tenants, subject to a limited check in favour of the landlords. What do you say to that?—In my opinion it would altogether put an end to improvement.

5499. Could you tell the Committee then what the character of the improvement is to which you refer?—I do not think there should be any point at which reclamation from either mountain or waste land should be stopped at all.

Mr. *Sexton.*

5500. Or buildings?—Or buildings, where buildings are taken into account. You see, in Ulster we presume the buildings are the tenant's, unless the landlord can prove that he erected them, or gave part of the cost towards the erection.

Mr. *Sexton*—continued.

Mr. *Macartney.*

5501. We will come to the matter of the Ulster custom, but you would be prepared to allow the presumption in favour of the tenant to go back any distance with regard to reclamation of waste land?—I think it would be only fair that that presumption should be in favour of the tenant.

5502. I presume that with regard to reclamation of waste land there is always a check in the fact that most reclamation requires to be maintained?—If you remove boulder stones and rocks there is very little risk of them going back again.

5503. I suppose there would be no chance of their being buried before another Sub-Commission came back again, would there?—I do not know.

5504. I am not talking now about such reclamation, but outside that we will say—reclamation of light mountain land—that would be liable to require to be perfectly maintained?—Yes, I have wrought for some time in County Down, and I think if a good deal of the reclamation there was not maintained it would go back to its original state, the country would get covered with furze, a large portion of it, owing to the nature of the soil and the sub-soil.

5505–6. Assuming that this suggestion was adopted, do you think it would be necessary to have a very careful registration of improvements at each survey of the holding for the purpose of fixing the rent?—I can only speak of the time since I joined the Land Commission, since that time we have had to make these maps and our pink reports, and I think if the Sub-Commissioner goes carefully into each holding and everything connected with the holding, with regard to improvements, aspect, water supply, situation, &c., that it is a very good record.

5507. Yes, excellent; the record is there, but no one is responsible for keeping that record. I have no doubt you make a very good record?—I understood the Land Commission was responsible for keeping it.

5508. Do they keep your field books?—Well, we send them in, but I think the most important record is our map and pink report. I understand they have built strong rooms to keep them in.

5509. You confine yourself, therefore, with regard to that suggestion, entirely to buildings and reclamation?—Yes, with regard to the point to which you would go back.

5510. Your duties as a Sub-Commissioner in fixing rent only began in 1889, I think you told us?—Yes, in 1889.

5511. And after arriving at a decision about the rent of any particular holding, I take it that you would first consider the capacity of the soil?—Yes.

5512. Its carrying capacity for quantities?—Yes;

Mr. *Macartney*—continued.

Yes; we always consider the carrying power in the question of grass lands.

5513. And practically (I will put it) the productive power; it is the same thing in the case of tillage?—Yes.

5514. You also consider its proximity to a good market?—Yes.

5515. And you consider the water supply?—Yes.

5516. Then with regard to prices, you have them generally in your mind, I suppose?—Yes, generally.

5517. With regard to the rents you have taken up and fixed, may I take it that so far as the judging may go you believe you have done substantial justice between landlord and tenant? Are you satisfied yourself?—Well, we strive to arrive at what we consider an honest rent; and I must say we have not been very much upset by the Court of Appeal. I have a list with me which bears evident proof of that in the County Armagh.

5518. Mr. Cunningham has suggested that in future very considerable relief might be given to the work of the Land Commission (I do not know whether it was Mr. Cunningham, but it was one of the witnesses here) by altering the procedure. Do you agree that the work might be facilitated by doing away with the hearing before the legal Sub-Commission?—I would not go in for doing away at all with the hearing in a great many cases before the Sub-Commission. I think it would be an absolute necessity that a great many of the cases should be heard before the Sub-Commission, but I think there are a great many cases where they might be dealt with without a hearing.

5519. Has your experience suggested to you any way in which one class of cases could be separated from the other?—I think where it is merely a question of value, and where the tenant supplies the claim for improvements on the back of his originating notice, and where no point of law arises (as in a great many cases it does not), there would be nothing to prevent the lay Sub-Commissioners in that case fixing a fair rent without a hearing. I do not see why, if a lot of cases were filed off to hear, a certain notice might not be sent to the landlord and tenant, asking them to take advantage of such a method in those cases as we do under Rule 73 at present; that would be to examine the cases by the lay Commissioner and fix a rent, from which there would be no appeal if both sides agreed.

Mr. *Leese.*

5520. That is by consent?—Yes, under Form 73 of Land Commission Rules the landlord and tenant can at present agree to have the rent fixed by the Sub-Commissioners, but that is a mutual agreement, and when we fix the rent there is no appeal from it, because they have both agreed to it; but in a great many cases outside that, I think, I am sure it would be an absolute necessity that there should be a hearing.

Mr. *Macartney.*

5521. Do you think that the course you have suggested would be adopted by any considerable proportion of the tenants in Ireland?—I could not tell that. We fix a great many rents where the landlord appeals and where the tenant appeals, and where nothing more ever comes out of it.

Mr. *T. W. Russell.*

5522. Do you suppose the abolition of the Sub-Commission would be accepted by a great many tenants?—The abolition of the Sub-Commission altogether?

5523. Yes?—No, I think it would be the very opposite; I am quite sure it would.

Mr. *Macartney.*

5524. Practically, what you have suggested might be done by an ordinary agreement by landlord and tenant out of court altogether?—That is to fix the rent themselves?

5525. Yes?—They may do it if they choose, but we have had some experience with regard to that.

5526. If they could not agree amongst themselves, do you think they would be more likely to agree in the way you suggest?—I am only saying that, provided the landlord and tenant were both satisfied that it was merely a case of value and to revise the rent, they might mutually agree to have it done in that way.

5527. What proportion of cases do you think that would affect?—I could not form an opinion with regard to that.

5528. Now, with regard to the 15 years' term, what is your view upon that?—I agree with other witnesses; I think it should be shortened.

5529. On what ground?—On the ground that there is so much fluctuation in prices. I do not know what the future may do, but there has been much fluctuation in the cost of labour so far as tillage farms are concerned.

5530. All over Ireland?—I can only speak of the north. I know the north better than any other part, and I think one element with regard to fixing rent is that Commissioners should be kept as much as possible in the districts that they know.

5531. That would principally apply, I suppose, to Antrim and Down?—With regard to tillage?

5532. Yes; to labour?—It applies a great deal to Ulster; it applies quite as much to Tyrone and Londonderry.

5533. Would you say it applied to Tyrone at the present moment?—With regard to the cost of labour?

5534. With regard to the cost of labour; yes?—Well, I cannot tell so definitely with regard to Tyrone, it is only from hearing the question discussed by Tyrone men.

5535. But you have no knowledge yourself as to

Mr. *Macartney*—continued.

to that?—No personal knowledge with regard to Tyrone.

5536. With regard to Antrim and Down we know what it is?—Yes.

5537. Then may I take it that you have no reason to suppose that there would be less fluctuation in 7 years than in 15 years —No; but supposing prices to be on the rise, if it were not a 7 years' limit, the landlord would have to suffer injustice by getting no participation in the rise of prices; and if it were a 7 years' limit, it would be similar with regard to the tenant in the case of a fall in prices.

Mr. *Macartney*—continued.

5538. Practically your view is the same as that which Mr. Cunningham expressed, that is, that with a limit of 7 years less injury would result to either party from fixing fair rents?—I would say 7 to 10 years; I would be as much inclined to 10 as anything else.

5539. But you think 15 too long?—I think so, judging from what has taken place within the last judicial term.

Friday, 22nd June 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. THOMAS MACAFEE, again called in; and further Examined.

Mr. *Hayes Fisher.*

5540. YOU attach great importance to a knowledge of the variety of local circumstances affecting holdings, and quite rightly. Now you are aware, I suppose, that there is a considerable difference in the amount of county cess in different counties in Ireland?—Yes.

5541. What have you found that difference to be yourself?—We find that the county cess in Armagh, where we are valuing at present, is pretty high, and for this reason, that the valuation there is particularly high.

5542. But you do find a very considerable difference; in some counties it would be very much higher than it would be in other counties?—Yes.

5543. Would that be a circumstance that would affect your consideration at all in fixing a fair rent?—Oh, yes, we have to consider that, because we have to answer one of the queries on our pink report on an assumption with regard to county cess and poor rate.

5544. Then, if you were fixing a fair rent on a holding, say of 30 acres, in one county where the county cess was very much higher than it was in another county, where you were also fixing a fair rent, you would fix a lower rent on the 30 acres where the cess was higher than you would on the holding where the cess was lower?—Yes, because a tenant has to pay all the county cess, and it is an element in fixing the rent.

Mr. *Brodrick.*

5545. In fixing rents what do you allow for proximity to a town?—It altogether depends on the distance that the farm lies from the town, and the size of the town.

5546. To what extent do you consider that distance bears on the question; I mean, how near to the town would you consider the question of proximity to a town at all?—It altogether depends on the town, and the importance of the town as regards markets, or its facilities for shipping farm produce.

5547. Well, take the case of a town like the town of Caledon; you fixed some rents there, did you not?—Yes.

Mr. *Brodrick*—continued.

5548. Would you allow anything for proximity within a mile of the town?—Yes, we might.

5549. What sort of percentage would you give a man for proximity, within a mile of the town of Caledon?—It would depend very much on the situation of the farm as well as everything else.

5550. I think you did not fix the rents in a case in which a man named Arches had the rents fixed against Lord Caledon a quarter of a mile from the town. I think they were fixed by Mr. Cunningham there?—I might say that in the cases I was on, quite close to the town of Caledon, I was acting as an appeal valuer for the Chief Commissioners.

5551. But you fixed the rent in a case of Caledon *v.* Allen, did not you?—It is very hard to recollect the particular case now. We have fixed hundreds of cases since that time.

5552. I think you have a copy of the pink paper here on which you fixed the rent?—I dare say I will be able to identify it (*referring to the document*)?—Yes, I remember this case.

Mr. *Sexton.*

5553. What is the name of the case?—Sarah Allen *v.* Lord Caledon. I remember it for two reasons: I remember fixing the rent, and I remember the Chief Commissioner sending the Report down for us to go out and re-value the holding, and we sent it back to them.

Chairman.

5554. On what ground?—On the ground that we had fixed it, and that they had sent it by mistake to us to revise as appeal valuers.

Mr. *Brodrick.*

5555. Did you allow anything there for proximity?—The report will tell that. I will just keep the report a moment (*after referring to the report*)?—No, we did not.

5556. That was within three-quarters of a mile of the town of Caledon, was it not?—No, certainly not; so far as my recollection serves me it was about a mile and a-half to two miles away.

I cannot

Mr. *Brodrick*—continued.

I cannot, from memory, put it down to a very few perches, but so far as my recollection serves me, it was from a mile and a-half to two miles.

5557. As a matter of fact, it states here (which I think is your report): "Situation as to markets, railways, and country roads; Armagh Market, nine miles; Caledon, one mile; intersected by county road"?—Then it is a little nearer than I thought it was.

5558. In that case you allowed nothing?—No.

5559. Do not you think in a case of that kind that it seems to be rather a strong case to add something?—Well, we did not look at Caledon as a very important market town; in fact we did not look on it in the sense of a market town at all; if we had we would not have put down Armagh as the market town.

5560. In a case a quarter of a mile from that town I see 50 per cent. was added for proximity value?—I cannot account for what other men will do; I will only accouut for what I do myself.

5561. There is a certain discrepancy between the two, is there not?—There may be, and very generally there is a discrepancy between the work of different men. That case was appealed, and it was inspected by two appeal valuers, and our rent was confirmed, even if we made a mistake.

5562. You fixed some rents on the Shaw Estate in County Armagh, I think?—Yes, we fixed a good many, over a hundred.

5563. Do you remember a case of a man named George Campbell, whose rent was 18*l.* 17*s.* 11*d.*?—Yes.

5564. You reduced it to 8*l.*?—I mentioned that case here the last day, and I mentioned at the same time that the same tenant had a holding across the fence on which we confirmed the old rent.

5565. Unless you have explained it to the Committee already, would you explain why it was that on the one you felt it necessary to reduce the rent so largely, and on the other confirm the old rent?—We valued both cases on the same basis so far as our ability served us to do so. No matter what the reduction is, we always give it; if the tenant is entitled to a big reduction we give it, and if the tenant is entitled to no reduction we do not give any.

5566. In that case did you reduce the rent in consequence of the improvements made by the tenant, or on what ground?—Any improvements the tenant proved in court that we found existed when we went on the holding we gave him credit for them, and whatever that reduced our gross rent by we fixed the rent at the fair rent that that produced.

5567. When you come to reduce a rent 60 or 70 per cent. (as is done in this case) there would probably be some special circumstances, would there not?—There may have been some special circumstances outside our knowledge by which the rent was increased to that amount, but we had not that specially before us; we only had the fact that the rent, in 1877, was so much, and that the Poor Law valuation was so much; then we inspected the holding; and we did it on the same

Mr. *Brodrick*—continued.

basis in the case of that tenant as in the case of all other tenants; we fixed the rent of 8*l.*, and we considered that a fair rent.

5568. To what extent do you take into consideration the Poor Law valuation?—We do not take the Poor Law valuation into consideration any further than that it goes as an element in fixing a fair rent. I have been asked if we make any difference between having a Poor Law valuation, or county cess on a high basis, or on a low basis, and I have said that we do.

5569. You find it to some extent a guidance?—Well, it is a thing that you have to deal with generally. Is it the Poor Law valuation on the entire holding that you refer to?

5570. Yes?—We do not pay any attention to that.

5571. Then I suppose you consider that the Poor Law valuation is a better guide than the existing rent?—We do not look on it as any guide at all, because we find it varies so much. In Armagh we have fixed rents more than 50 per cent. under it. In Meath we have fixed rents at it.

Chairman.

5572. In Armagh what did you say you did?—We have fixed rents more than 50 per cent. under the Poor Law valuation in Armagh.

5573. And in Meath what have you done?—In Meath we have fixed rents, often, at the Poor Law valuation.

Mr. *T. W. Russell.*

5574. Does that difference arise mainly from the fact that the valuation in Armagh was very high?—That is supposed to be the cause of the difference. There is no doubt that Armagh is the highest county with regard to Poor Law valuation that I have wrought in.

Mr. *Brodrick.*

5575. I see here you fixed some rents of Lord Dartrey's in Armagh?—Yes.

5576. Do you remember the case of a man who had a holding of 13 acres 2 roods; Government valuation 21*l.*, old rent, 22*l.* 7*s.* 6*d.*, and whose rent you reduced to 12*l.*?—I have no doubt that is the case.

5577. Therefore you gave a rent of 12*l.* upon 13 acres; was it brought to your notice that in the adjoining farm held by a tenant named Crocker it was proved, before the Head Commissioners, that the tenant had sublet two acres for 50*s.* an acre?—Crocker's farm did not come before us in evidence, and we had nothing to do with it; in fact we would not have had anything to do with that even if it had, because we never take evidence with regard to a thing we are not going to inspect; we only deal with the evidence with regard to the cases we have in hand.

5578. Then you do not consider that subletting is any guide?—We do not deal with subletting in any way unless it is before the Court. We never take evidence with regard to a case that might have been fixed by other Commissioners outside our case.

Mr. *T. W. Russell.*

5579. In other words, you have a system founded upon certain principles, and you adhere to it?—Yes; we would not take evidence on a case that may never come before us, and that cannot come before us; because we cannot give an opinion with regard to what may have been done on another holding.

Chairman.

5580. Which you cannot test?—Which we cannot test. We cannot go over the country examining holdings that are not before the court.

Mr. *Brodrick.*

5581. But I suppose, if it is within your knowledge that a certain price is got for land, that bears to some extent on the rent you would fix upon it?—No; we do not allow that to have any weight in our mind at all. If the case is before the court and there is a sub-letting on it, and the landlord brings forward evidence that the tenant has sublet a portion of this holding at so much per acre, then we are bound to take that evidence and deal with it as we think right.

5582. I presume, taking the gloomy view you do, you would rather discourage the power of sub-letting; you consider the power of sub-letting should be restricted to some extent?—I do not think that sub-letting is a good thing in principle.

5583. You think, at all events, that the rent you are fixing is not likely to be the rent that could be obtained?—Certainly not, because there are many things to consider in sub-letting. That case that you refer to may be the case of the man letting two very good acres of his holding for the six months' grazing, where the tenant has to keep up the fences, pay the taxes, and to take every other responsibility connected with the holding upon himself.

5584. Have you fixed tenant-right much outside Ulster?—Do you mean specified value?

5585. Specified value, yes?—Not much.

5586 You have fixed a certain number of cases outside Ulster?—A few.

5587. What principle do you go upon in arriving at a specified value?—Well, we have had very few cases of specified value; but outside Ulster the principle that I generally have in my mind with regard to fixing specified value is that we first fix a fair rent, and then we fix a competition rent, and we consider the amount of money that the difference between the two capitalised should bring to the tenant.

5588. The difference between the fair rent and the competition rent you capitalise, as it were?—Yes.

5589. At what number of years' purchase?—Well, we take the fair rent at so much, and the competition rent at so much, and we consider how much money it would take to recoup the tenant, say at 4 per cent. interest, the difference between the two: that is one way of arriving at it.

5590. I only just want to get at it in figures; suppose you fixed the fair rent at 40*l.* and the competition rent at 50*l.*, what would you then consider the specified value to be?—In that case, at 4 per cent., it would be 250*l.*

Mr. *Brodrick*—continued.

5591. We have had some evidence to the effect that it is considered a hardship that the specified value should be fixed; do you agree with that?—That depends on the circumstances under which you are asked to do it. I hold that the right of pre-emption is rather a hardship against the tenant.

5592. You think it is a hardship?—Yes, I think in a great many cases it is exercised where it is rather a hardship.

5593. Colonel Bayly stated, in answer to a Member of the Committee, that when the specified value of a tenancy has been fixed, the landlord can purchase at the sum so fixed, and that any improvements which the tenant has made in the meantime are lost to him; do you agree with that?—Well, I cannot answer that question, because I have never had a case before me with regard to that.

5594. You have never had the point before you?—No, and I do not know the law on the subject either.

5595. You consider that a legal question?—Yes; I do not know the law on the subject with regard to the improvements that the tenant might make between the time at which we would fix the specified value and the time at which the landlord would take up the holding.

5596. If, by Section 8 of the Act of 1881, it is provided that the value of the improvements made by the tenant since the time at which such specified value was fixed, if that value is to be taken into account, I suppose the tenant would not lose his improvements?—If a point like that arose before me I would immediately refer it to my Chairman and be guided by him.

5597. What has been your experience with regard to improvements by the landlords; have you found them able to prove their improvements?—I have had very few cases with regard to that subject. Outside Ulster I had one or two cases only where the landlord had made drains; we gave the landlord credit for those, but we have had cases where the landlord claimed buildings outside Ulster and which we gave him credit for.

5598. Had landlords in your experience, where you have been fixing rents, kept books regularly?—Oh, yes, we have always found that they were able to turn up any improvements they had made; in fact we had one case where the landlords' representative in court proved beyond "yea" or "nay" that they had given the tenant slates and timber, and when we went out to inspect the holding we did not find a slate on all his buildings.

5599. Have you ever had cases where the tenant claimed improvements which you did not discover when you arrived on the holding?—Yes, in a great many cases.

5600. Do you think, as a matter of fact, that the tenant, as a rule, finds much difficulty in bringing people to swear to the improvements he has made?—Oh, no; we have no difficulty in finding that out.

5601. You can get anybody to prove almost anything, cannot you?—Yes; the reason why I mentioned this case was, that it was impressed upon our minds very much, because a book was produced

Mr. *Brodrick*—continued.

produced in which the entries were made; but I may say that in every case in which we had a landlord produce a book with regard to laying out money before that, we found it always correct.

5602. But the smaller landlords do not keep books, do they?—The smaller landlords do not, as a rule, give very much for improvements.

5603. There are always exceptions to every rule. In cases where a smaller landlord has made improvements, and not got books, he might be damaged, might he not; he could not bring anybody to swear to the improvements?—I cannot state anything but what occurred before us, and that I have already stated.

5604. Have you ever had a case before you in which a tenant's neighbours came to swear to a landlord's improvements?—Well, I do not remember one.

5605. It would have struck you if you had had such a case, would it not?—Yes, I think it would.

5606. How do you deal with the question of deterioration; where the land is a good deal deteriorated by a tenant, how do you deal with it?—I am speaking for myself and my colleague; in every case in which we have been where we have seen evident traces of deterioration through over-cropping, want of manure, and so forth, we have always striven to value the land as near as possible to what should have been its normal value, not in the state in which we find it when we visit the holding; and in every case we state in our pink Report that we have done so.

5607. Then under your valuation, at all events, a tenant does not get the value on his own deterioration?—Certainly not.

5608. Do you find that on seeing land for the first time, you can judge of that?—I think a practical farmer should know when land is deteriorated, when it is over-cropped and not sufficiently manured.

5609. I suppose you consider, do you not, that legal proof is necessary in the question of improvements; you cannot deal with hearsay evidence; you must have legal proof, must not you?—Oh, yes.

5610. You do not consider it an injustice that legal proof should be demanded?—Well, I do not know. I think it is a very great hardship in many cases. We had a sitting at Newry, just before I started to attend this Committee, in which we had to rule out a great many improvements, because it was only hearsay evidence that they were founded upon. I had inspected some of the cases before I came here, and we saw clearly that the tenant should have got credit for the improvements, only he was not able to prove them.

5611. With regard to bog land, do you agree with some witnesses that landlords have recouped themselves by putting a rent on bog after they have had the rent reduced on the holding?—That is with regard to turbary?

5612. With regard to turbary, yes?—No; I do not know of any case in my experience in which they did it. I only know that in one case that occurred in the County of Roscommon, the evidence before us in court proved that the

Mr. *Brodrick*—continued.

tenant enjoyed two or three very good turf banks; we could only deal with what tenants required for their own particular use, and in this case it was evident to us that what had been carried out had been done with the sanction, or the complete knowledge, of the landlord; that is, that the tenant had used those turf banks and sold the turf in Athlone; but the landlord refused to allow us to fix the rent, giving the tenant anything but one particular bank, which he said was quite sufficient for the tenant's own use, and he took one of the banks and gave it to a neighbouring tenant, and there was a very great row that day on the holding in consequence.

5613. I suppose if a landlord wanted to give turf on land occupied by another tenant he would have to pay value, would he not?—It depends altogether on the locality in which the tenant is situated, because, if you are in some districts where there is plenty of bog, there is no difficulty in getting bog outside; but if it is in a district where the bog is cut away, and it is getting scarce, it is hard to get.

5614. In your experience, when you have had claims for reclamation of bog, has very much work been done; or what is your experience as a rule?—We find a variety of experience with regard to the reclamation of bog lands. We find tenants making absurd claims with regard to the cost of the reclamation, and we find other tenants who do not claim too much; and a very great deal depends on the nature of the bog lands with regard to the result of those improvements. I think there is no soil that there is more difference in than bog.

5615. Does not the reclamation very often consist of the tenant having taken off the top and simply cropped the soil?—Yes; but a tenant does not take off the turf bank in my opinion without having to pay for it, and he is perfectly entitled to take it off. It is no use for cultivation until that is cleared away.

5616. Quite so; but that is not a very heavy work of reclamation, is it?—It varies very much; in some cases you find the sub-soil full of large stones, boulder stones; it all has to be drained; at least, the great bulk of reclamation of that sort has to be; an important element in it is drainage, and in some classes of bog land you have to remove roots of trees and so forth.

5617. You mentioned a case, I think last time, in which a tenant was unable to prove his improvements, and you thought he had been damaged?—Yes.

5618. But then you reduced that rent by a half, did you not?—We did; somewhere about half.

5619. Where do you think the damage to the tenant came in?—We think that it was a very hard thing for the tenant that we were not in a position to give him credit for his improvements that we found to exist on inspection.

5620. Would you have reduced the rent more than half if it had not been for that circumstance?—We would if we had been in a condition to give credit for his improvements. We considered the rent an exceedingly high rent, and the reason I mentioned it the last day was be-

Mr. *Brodrick*—continued.

cause I considered that one of the hardest cases that I had come across in my experience.

5621. But you think that his getting 50 per cent. off was not sufficient?—I do not look at the amount of percentage at all. I say that if a tenant requires 50 per cent. off to bring him to a fair rent, he is as well entitled to it as the man whose reduction of 5 per cent. would make a fair rent. The basis of the amount of percentage that we allow is no proof of whether it is a fair rent or not.

5622. Was that a rent in Ulster?—Yes, it was in County Down.

5623. Do you know what the tenant-right of that holding was?—I do not know what the tenant-right was; we had no evidence of that before us at all.

5624. But what is your experience; have the prices given for tenant-right gone up or gone down since the Land Act of 1881 was passed?—We have very little means of knowing the state of the market with regard to tenant-right, because that does not come before us much in evidence. I have a little knowledge of it in my own district; in fact, I bought a farm not long since myself, on which I had to pay a pretty fair price for the tenant-right.

5625. Of course, with your knowledge and experience and your farming information, you must have come across many cases in other districts, as well as in your own district, in which enormous prices have been given for tenant-right in the last few years?—They do not come before us in evidence at all, unless we are dealing with the question of value.

5626. I mean supposing you fixed the rent one day at half the previous rent, and then a sum equal to between 20 and 30 years' purchase is given for the tenant-right, you consider that that has nothing to do with it?—I cannot tell you whether that occurs or not, because it never comes before us.

5627. In fact, you think you may keep your eyes shut to the tenant-right under the Act?—I do not think the question of tenant-right under the Act in Ulster has anything to do with us; we have only to value the improvements, the tenant's interest with regard to the improvements, and the nature of the soil. We fix a fair rent, and if a man goes and gives 20, 30, or 40 per cent. more for the tenant-right of the holding we cannot alter it. Within the past two years, I bought, myself, a holding for which I paid, knowingly, 20 or 25 per cent. more than the holding was really worth; but there were a variety of circumstances in connection with the holding which made me buy it.

5628. But you do not think the landlord has any right to share in those "circumstances"?—That is not the question, in my opinion; that is not to alter the fixing of a fair rent at all; I can only speak for what I know, and only will speak for what I know. On this holding the buildings were mixed up with buildings of mine; the fields were mixed up with fields on another farm; there was a right of way I was very anxious to get, to lead to a portion of my own farm along which I could get only by getting the other; and taking all these circumstances into account I was anxious and determined to

Mr. *Brodrick*—continued.

buy the holding; the tenant knew that I was anxious to buy it, and he imported a man from 10 miles away to bid against me. I had to pay very much more for the holding than I should have had to pay if I had been an outsider, simply buying it in the market for what it was worth.

5629. After that gruesome experience would not you have felt almost as safe in the hands of a landlord, would not he have let you the holding on reasonable terms do you think, simply because he thought you wanted it for the right of way?—We have very few cases of that kind in Ulster because the tenants all own the tenant-right, and you have to deal with the tenant when it comes into the market.

5630. Still extending outside Ulster?—That is another question.

5631. Still, where the tenant-right has not been bought, and the man has not paid to come in, do not you think there ought to be some moderation in fixing these values?—Outside Ulster is a different thing. There are many things come before one I would say with regard to fixing the value of a holding, or with regard to taking it into account at all, which you cannot do unless you go and find out all the circumstances connected with the holding, quite as much as if you were going to fix a fair rent, because many farms go into the market for sale, and if you knew all the circumstances with regard to the purchase of those farms, you might find that they operated very extensively beyond the ordinary tenant-right value of the holding.

5632. I gather then from your evidence that as the Act lays on you the duty of fixing a fair rent, and also lays on you the duty of fixing the specified value, you hold that the Act ought to put you in exactly the same position to carry out the second duty as you were put in to carry out the first, namely, that you should consider all the circumstances of the holding and the cost and the district?—I think we should have all the evidence on both sides, with regard both to the facts of the specified value and the facts of the fair rent, that the tenant and landlord can produce fairly; and I think then we should deal with both cases taking every circumstance that is brought before us, and taking every circumstance that we find on inspection into account in fixing a fair rent or in fixing a specified value.

5633. Then in your opinion the evidence we have received from some Sub-Commissioners that they take great pains about fixing fair rent, and then make a "shot" at the specified value is hardly the system on which you think the thing should be done?—I do not know what other Sub-Commissioners do, nor do I care what other Sub-Commissioners do; I can only speak for myself, and I can say honestly before this Committee that I never took a "shot" at anything, nor do I intend to do so. I know this, I do not care whether it is a holding of two acres or of 200 acres; I make it a point of going into it carefully. There is not a field on the holding but what I inspect carefully, I examine it carefully. I dig it, and there is nothing I omit in connection with it, whether it is aspect, situation of a county road, or water supply or anything else, which every Sub-Commissioner should

Mr. *Brodrick*—continued.

should take into account carefully and see for himself.

5634. To what extent do you think the landlord is entitled on a holding to the unearned increment?—Is that with regard to what land the tenant has?

5635. In giving the tenant the benefit of money he has expended, do you give him the whole increase which accrues to the farm or not, the value?—We give the landlord the whole increase that accrues after the expenditure of the tenant.

5636. You do so?—Yes.

5637. Surely in a case where you reduce the rent by a half, the value of the land without the improvements must be taken exceedingly low?—The value of the land without the improvements; no, I do not know that.

Mr. *T. W. Russell.*

5638. Does not that entirely depend upon what the old rent was?—Certainly. We cannot tell what the land was a hundred years ago; and we cannot tell the circumstances under which the rent might have been increased. I valued a farm about three weeks ago where we had in evidence that the rent in 1769 was 13*l.*, and the rent before us was almost 60*l.*

Chairman.

5639. It had risen from 13*l.* in 1769 up to almost 60*l.* in 1894?—Yes, the lease stated 13*l.*

Mr. *Macartney.*

5640. Was it Irish money or not?—I could not tell you.

5641. That makes a considerable difference, does it not?—It may make a difference of 2*l.* or 3*l.*, not more.

Colonel *Waring.*

5642. Did it occur to you to inquire the value of 1*l.* sterling at that date, and the value of produce?—No.

5643. Then is it not perfectly irrelevant?—I do not think so.

Mr. *Sexton.*

5644. The difference between the Irish and the English currency is one-thirteenth, is it not?—Yes, somewhere about that. The reason I mention that case is because it just flashes on my mind, and it is owing to this question, when we reduce a rent by one-half what improvements on the land had there been before the rent was increased? This case occurs to me as one that was before me very lately, in which it was clearly proven in court by the old lease that at a certain time the rent had been 13*l.* and that at the present time it was between 50*l.* and 60*l.*, almost 60*l.*; the present rent is 52*l.* 9*s.* 5*d.*

Mr. *Brodrick.*

5645. In the large reductions that you have recently been making, have you been influenced very much by the fall in prices?—Oh, yes; we strive to keep the question of prices of farm produce before our minds.

5646. Did you take the farm prices of a year or of several previous years, or how did you do?—I do not think it would be fair either to the

Mr. *Brodrick*—continued.

landlord or the tenant just to take the immediate prices that are operating at the moment into account in fixing a rent for 15 years.

5647. You are aware that the prices are, upon the whole, higher than the prices on which the valuation was fixed?—Well, I cannot say, taking them generally, that they are very much higher, that is the poor law valuation; I do not think, taking them generally, that they are; for instance, if we had operated on the prices that were paid for several varieties of farm produce a few months ago, we would have fixed very unfair rents, even taking the prices that are in operation at the present moment, because there has been a very great change in the prices of a number of commodities now from what was the case six months ago.

5648. That is one of the elements you take into consideration, the state of the land is another?—Yes; we consider that the general run of prices should be an element in fixing a fair rent; but as I say, they vary very much.

5649. In re-fixing rents after the close of the judicial term, what system would you propose; would you go into the whole matter again?—I think that a very good system would be to give the landlord and tenant a chance of settling non-contentious cases without the trouble and expense of a hearing, where that could be done. If the case was inspected by two lay Commissioners, and their rent was accepted by both parties, then let it be filed; if there was anything they considered wrong about it, give them the option of appealing to a court, such as the Sub-Commission Court.

5650. You would merely give them the option of bringing in the legal Commissioner if they found it necessary?—Yes, I would give them the option of appeal to the present Sub-Commission Court. On appeal I would make that court final on the question of value.

Mr. *Sexton.*

5651. I do not understand you to say that the two Sub-Commissioners who value in the first instance should be the same two Sub-Commissioners who sit with the legal Sub-Commissioner?—Certainly not.

Mr. *Brodrick.*

5652. Do you think, taking the rents you have been fixing, there have been a great many appeals?—Yes, we have had a great many appeals, but we have not had very many changes. We had a list at Armagh, the last time the Land Commission sat at Armagh, of about 150 cases, and they changed our rent in three cases; one of them was changed on a different area, and two of them were changed on the amount, one 2*l.* and the other 30*s.*, I think.

Mr. *T. W. Russell.*

5653. In some of the cases the reduction you had given amounted to as much as 50 per cent. had it not?—Yes, and there were a few of them that amounted to close upon 60 per cent.

Mr. *M'Cartan.*

5654. In answer to Mr. Brodrick's question about Caledon, you said you put on nothing for proximity; is that so?—Yes.

Mr. *M'Cartan*—continued.

5655. Do not you make inquiry as to where the market town is?—Yes, always; and if we had considered Caledon, the market town for all the farm produce, we would not have put down Armagh as the market town.

5656. It is for proximity to a market town that you put something on?—Yes, chiefly.

5657. You were asked about whether you took into consideration the rent on an adjoining farm. As I understand, it is against the rule of evidence to prove in court anything as to the adjoining farm; you must confine yourself to the particular holding, must you not?—We must confine ourselves to the case before us.

5658. And you could not take into consideration the rent on the adjoining holding?—Certainly not.

5659. Now, as to the improvements, you seem to have had large experience; you frequently meet cases where the tenant loses his improvements because he cannot give strict legal proof of them?—Yes, we have met cases of that kind very often.

5660. You have met cases, I suppose, where you had no doubt the improvements were made by the tenant, and where no attempt was made by the landlord to prove that they were made by him, and still you were obliged to charge rent upon them?—Yes, we have.

5661. You were asked, I think, a question as to whether you ever knew of a case where a tenant attempted to prove improvements made by a small landlord. Do you know of any case, in your experience, where the small landlords did make the improvements for the tenant?—Well, I cannot bring up to my mind any case. There may have been cases, but dealing with so many cases it is very hard to recollect.

5662. They are "like angels' visits," I suppose, "few and far between"?—I do not know that.

5663. Now, as to the specified value. Do you think there would be any great hardship if all the rest of Ireland were treated in the same way that Ulster is now, and that no such duty was cast upon the Commissioners, as to fixing the specified value?—We have been asked to fix specified value in Ulster, as well as outside Ulster.

5664. Upon the Ulster custom?—Yes; there are cases where that is asked; if the landlord serves a pre-emption notice in the case of a sale it is referred to the Land Court, and the Land Court has to fix it.

Mr. *Macartney.*

5665. That is not "specified value" in the case of a sale?—It is the true value.

Mr. *M'Cartan.*

5666. What do you do in that case?—We have generally evidence given us in court as to the price which it was sold at in the neighbourhood, and you have to examine the holding, and take the circumstances connected with it, and deal with it.

5667. Do you give, in such a case, the competition value?—I am trying to remember if we had a case of that kind. I do not think we had a case in Ulster. I have known cases, but I cannot give evidence of cases that I have not dealt with myself.

Mr. *Sexton.*

5668. Is the landlord in an Ulster custom case entitled to call upon you, in case the tenant is selling, to fix a true value?—I do not know what he is entitled to do by law, but I know a number of cases where a tenant was selling, and he had to serve a pre-emption notice on his landlord.

Mr. *M'Cartan.*

5669. Was the holding subject to the Ulster custom, do you know?—I really could not answer that question.

5670. As I understand, the tenant of a holding subject to the Ulster custom has the right of free sale. Do you see any objection to that extending to the tenants in all parts of Ireland?—I may state that I have been told by a lawyer that it was not necessary, yet I know that there is a practice of the kind.

5671. Well, I think there is no doubt as to the law, that a tenant subject to the Ulster custom has a right to sell his holding, and all the right of the landlord is to get a solvent tenant. Do you see any hardship in having that extended to the rest of Ireland?—Well, I think that a tenant should have a right to sell in any part of Ireland where he has an interest in the holding, and has made the improvements and so forth.

5672. And if that provision was extended to the rest of Ireland the Commissioners would be relieved of the very invidious duty of fixing the value of these farms?—They would, and I think I am perfectly safe in saying that the Commissioners would not be sorry to be relieved of it.

5673. You have had considerable experience, I believe, in some of the worst parts, poorest parts, of the North of Ireland, County Down for example?—Yes, I have wrought in County Down, Armagh, Tyrone, and Monaghan.

5674. Do you know of any case, say in County Down, along the Mourne Mountains, where the rents are not charged on the tenant's improvements?—Well, judging from a great many of the cases, along the County Down Coast and running up towards the Mourne Mountains, I have no doubt that the tenants have been charged rent on their improvements, because it must have been, in a number of cases, very very poor land, some time ago.

5675. Such land as was described the other day it would be very difficult to return to its original state?—Yes, there is land lying between Newcastle and Castlewellan that there has been a great deal done to; there are tremendous piles of fences there made of stones, which must have been removed from the land.

5676. Now about town parks, I believe you were one of the Commissioners who fixed the rent in that famous case in Dundrum, M'Cann's case?—Yes, we fixed that rent last summer.

5677. In the case of a holding that is near a town, or what is called a town now, is it more valuable to a person living in the town than to a person living outside it; Is it the proximity that give the value to it?—Yes, the proximity to the town is what gives the value, but the question of a town did not operate in our minds so much there; we put on 10 per cent. proximity, but what operated most in our mind in putting on that 10 per cent. was the fact that it is a small seaport, and it is a plac

wher

Mr. *M'Cartan*—continued.

where it is fairly convenient for farmers to ship some sorts of farm produce, and I see Lord Justice FitzGibbon, in his remarks, took up the same idea; he exactly took up the idea that operated in our minds when we fixed that 10 per cent.

5678. Do you think there would be any hardship if this artificial boundary were removed altogether with regard to town parks?—My idea with regard to that is, that if the question of town parks were removed altogether, it would do away with a great deal of friction, and I think the Sub-Commissioners, in fixing a rent, should be armed with perfect authority to put on as much as they considered the holding was entitled to carry with regard to proximity or accommodation value connected with it.

5679. And the landlord would lose nothing by way of rent in that way, would he?—I do not think the landlord would lose anything in the rent.

5680. What he would lose would be the power to evict?—Yes; and there would be the power of the town to take up, for any public purpose, land surrounding the town.

5681. Now, as to the mill holdings; I believe you have had considerable experience with regard to them?—Yes, we have had a few cases of mill holdings.

5682. Were you obliged to exclude them all?—Yes, except where a flax mill existed.

5683. Is there any particular case you have in your mind which would illustrate the hardship to the tenant?—There are one or two cases in County Down we had to deal with that, I think, were very hard to the tenant.

Mr. *Macartney.*

5684. Will you give the name of a case?—So far as I recollect, Lockhart, I think, was the name of the tenant in one case.

Mr. *M'Cartan.*

5685. Where was it?—I think it was from Banbridge round towards Gilford.

Mr. *Macartney.*

5686. Was it on Lord Downshire's estate?—No, it was not.

5687. Do you remember the name of the estate?—No.

5688. You will give the reference afterwards, will you?—Yes.

Mr. *M'Cartan.*

5689. Just state the difficulty?—The difficulty, so far as I am concerned, in coming here to give evidence, as to giving the names of the landlords and tenants, is this: I got an intimation to come before this Committee on Wednesday night, and I had to start off early the next morning, and I had no opportunity of getting my books, because we have to send our books into the office. I remember the name of the tenant in that one case.

5690. I suppose you have met a number of cases where the farm was mainly, or almost entirely agricultural, and where the mill had ceased to exist, and yet you were bound to exclude them from the Act?—Yes. Speaking from memory, on this holding the tenant had two mills, one was a small country corn mill, the other was

Mr. *M'Cartan*—continued.

a flax mill. Flax mills do not excludethe tenant from getting a fair rent fixed. The flax mill was working, and the corn mill, both according to the evidence and according to our opinion when we saw it, had not wrought for 12 or 15 years. We had to exclude the tenant in that case from getting a fair rent fixed, because the corn mill was on the holding, and the landlord raised the point that it was a mill holding.

5691. Do you think that this holding should be included in the Land Act?—My idea, with regard to this sort of holding is this: that a small country corn mill, as milling has gone in these times, has no better right to exclude a holding from the operation of the Land Act than a flax mill, because there are very few country corn mills, but are simply used for grinding oats for the farmer for feeding purposes.

5692. Have you met any cases where the farm was excluded by reason of having flax mills or scutch mills on it, that being the reason why the houses were sublet?—The cases in which we have dealt with holdings with flax mills on them, were simply cases of flax mills, and they did not require very many cottages.

5693. I will ask you with reference to a very important paper that has been handed in by Mr. Bailey, and circulated this morning, had you anything to do with fixing the rents on the estate of Captain J. Harrison?—Yes.

5694. I see here that, after 1881, the rent was agreed upon between the landlord and tenant, but had not been filed, and afterwards the tenant came to the Court to get the fair rent fixed notwithstanding that there had been a rent agreed upon. On the entire estate, as given in this return, the rent agreed upon was 81*l.* 4*s.* 6*d.*, and that was reduced by the Sub-Commission to 53*l.* 5*s.*?—The agreement was made in 1882, I think.

5695. At all events they were agreed after the Act of 1881, they must have been?—Yes, 1882 was the evidence we had before us.

5696. I will just direct your attention to one case, the case of Samuel M'Murray, where the rent was 47*l.* 15*s.* in 1881, and became reduced to 40*l.* 15*s.*; that case came before the court, and it was further reduced to 27*l.*?—Yes.

5697. Could you give us any explanation of how that large reduction came about?—We went on the holding, we inspected it field by field, and we put what we considered a fair rent on each particular class of soil; and when we had done that, we made it up at our rent, and that was what we arrived at, giving the tenant credit for his improvements, and he had made very extensive improvements by raising rocks and boulder stones, and draining part of the farm; and I may state that we had evidence before us in that case on behalf of the landlord. This was a case in which we had evidence before us that the landlord had laid out some money in improvements, and the improvement was building a sea-wall to keep out the tide in Strangford Lough from going up on a portion of the holding. The landlord's representative was there, and the tenant was there, and they pointed out the portion of the farm which the sea-wall had benefited; we found that it improved about

Mr. *M'Cartan*—continued.

three acres of the holding, and we valued it as it stood at what it was worth. The rent in that case, I might state, up to 1857 was 20*l.* 16*s.* 8*d.*

Colonel *Waring.*

5698. You do not remember, I suppose, the acreage of the holding approximately?—The acreage of the holding was 42 acres; the old rent, before the reduction, was 47*l.* 15*s.*; the rent fixed by mutual agreement was 40*l.* 15*s.*; the judicial rent fixed by us was 27*l.*; the Poor Law valuation was 39*l.*; and the evidence given in court was to the effect that the rent up to 1857 was 20*l.* 16*s.* 8*d.*, and that was more than doubled from 1857 to the then present time.

Mr. *M'Cartan.*

5699. Would it not have been a great hardship to the tenant if the amount agreed upon had been filed as fixed at 40*l.* 15*s.*?—Yes, according to our opinion it would.

5700. That is nearly double the fair rent. Now, as to the suggestion which you made as to the fixing of rent in non-contentious cases, with such an example as this before us, would it not be well to prevent any agreement from being filed, made between landlord and tenant, unless an inspection had been made by some of the officials of the court to see that it was a fair rent?—Yes; but the first part of your question was, would we not agree that rents should be fixed in non-contentious cases in that way.

5701. Yes?—You mean the rent fixed between the parties?

5702. Between the parties?—That is leaving the Land Commission out of the question altogether.

5703. Yes. Do you think now, in a case like this, where it was a non-contentious case in which the rent was fixed between the landlord and the tenant, it should not operate by way of a judicial rent unless it was filed in the Land Commission Court?—It is a very difficult question to answer. If you look forward to a point which I suppose this Committee is not dealing with, the question of purchase, and that it was afterwards to become the basis for any question of purchase or of mutual agreement between the landlord and the tenant with regard to purchase, I think it would be well to have it done.

5704. You know that in the 1870 Act there were special provisions passed to prevent the Ulster tenant from contracting himself out of the Ulster custom; do not you think there should also be a special provision to prevent a tenant from agreeing to a rent which he would be unable to pay, unless it were approved of by some official such as a land valuer?—There may be a risk that the tenant may be labouring under certain disabilities which would place him in a bad position to make an agreement; but if the tenant feels that he is in that position he can appeal to the Land Commission Court.

5705. Suppose the tenant was in arrears, as at present, and he had no court to appeal to to extinguish his arrears or to deal with them, as at present, would it not be fair that an official should be sent from the Land Court to examine as to the rent which he consented to pay?—If a

Mr. *M'Cartan*—continued.

tenant is debarred from going into the court by any circumstances of that kind, it might be well to have that provision.

5706. Now, as to the suggestion that in non-contentious cases two lay Commissioners (I suppose) should go down and value, is it your notion that that should be done on the application of either party, either the landlord or the tenant?—I think there should be a mutual agreement with both parties that they would have the case examined without a hearing.

5707. A mutual agreement?—Yes.

5708. That is, that there should be a joint application by landlord and tenant submitting themselves to the valuation put on by the court official?—I think both landlord and tenant might be asked if they considered the particular case a case in which it could be considered by the lay Commissioners examining the holding without a hearing; but I would certainly give either party the right to appeal to a Sub-commission Court, with a legal chairman.

5709. And you would have the decision of the Sub-commission Court final as to all questions of fact or value?—Yes; I would have the Sub-commission Court in that case, if previously inspected and valued by two lay Commissioners, the final court with regard to questions of value. And I might state that the one great reason why I would adopt that view is this: the Sub-commission Court comes nearer the door of the tenant than any other court, because we make it a point that we go and sit in any sort of a place where we can get a convenient court; and it is sometimes a hardship on poor tenants who live at a distance to go into centres, or places 50 or 60 miles from their home.

5710. Not only is it a hardship to the tenants who have to go many miles on account of the expense, but are there not many cases where legal proofs of the improvements can only be given by very old persons who are unable to go that distance?—Yes; sometimes we have very old persons. Where we have legal proof given with regard to improvements we have very old people brought into court.

5711. Who could not go away, for example, from Kilkeel to Belfast?—Yes; for instance, they may want to bring two or three witnesses, and it is pretty hard that they would have to take them such a distance.

5712. You have told us yourself that you have farmed a good deal; you have also given us the profit you made by the farm?—I do not know that I could give you that.

5713. In your own case, before you became a Commissioner, did you get any return at all for the cost of your improvements?—I do not think I did; the fact of the matter is that for many years I have been living not altogether by my farm. To keep my family as comfortably as I wanted to keep them, I supplemented my farming by business; I bought a good deal of farm produce of various kinds.

5714. I suppose if you had been living very well by your farm, the chances are we would not have the pleasure of seeing you here to-day?—I must confess, if I was able to live well, I would rather be at home than separated from my family.

5715. I want

Mr. *Sexton.*

5715. I want to ask you two or three questions on the pink Report. In paragraph 14 of the pink Report improvements are to be specified which are said to be "exempted from rent." A tenant might understand by that, might he not, that when an improvement is allowed to him no rent is levied in respect of it; what it means is that the cost is allowed to him, but that rent is charged on the balance?—Yes.

5716. I see you are asked here to specify as to county roads; do you increase the rent when the farm is well situated in regard to county roads?—We take the fact of the farm being fairly well situated with regard to county roads as a basis on which we fix the rent; it is an element in fixing the rent.

5717. If the farm was favourably situated in regard to a county road, the rent would be higher than if it were not?—Yes, it would.

5718. Who made the county road; who paid for making it?—The tenant pays the great bulk of the county cess.

5719. Does not he pay all the county cess really?—All the county cess on his holding.

5720. Do not the tenants of the county pay all county cess, except in respect of lands in the occupation of the landlord?—Yes.

5721. So that the tenant makes the roads?—We have had some few cases where by agreement the tenant and landlord pay half each, but where we have a case of that kind we always give the landlord the credit for the half, bringing them all to the same uniform basis.

5722. But the ordinary rule is that the tenant pays the county cess, then you give the landlord in the rent the advantage of contiguity to the road which the tenant made?—Yes, and on the other hand, if a tenant is situated a long distance from the road with a bad approach, we give him an allowance for that.

5723. For distance?—Yes.

5724. But in the case where there is an allowance added to the rent for the vicinity of the road, the landlord gets rent really by the expenditure of the tenant on the road?—We value all holdings which are situated at or near a county road on the same basis without adding anything for the situation.

5725. The expenditure of the tenants in making the county roads becomes in certain cases an element in increasing the rent, does it not?—I do not know that it operates in our minds in that way. I may say with regard to the county roads that in all holdings where the acreage is given in court, it is the gross acreage, including county roads, but we always exclude the acreage under "county roads," and do not put any rent on them.

5726. That is not my point. My point is that the vicinity of the roads, made by the expenditure of the tenants, becomes an element in increasing the rent in certain cases?—I understand the question, but what I want to convey to your mind is that we take the normal position in which we are to start to fix a rent on a holding that is well situated for county roads; and if we go back from that point to a case where the tenants are not well situated for county roads we then deduct from that point.

Mr. *Sexton*—continued.

5727. It is another way of stating the same thing?—Yes, much the same.

5728. The vicinity of the road is an element in the case?—Yes, it is an element, and a very important element, because it is a great convenience to a farm.

5729. So I think; I think it a very important matter also that the tenant should be charged rent for roads he has made himself. Now, in valuing the holding, you value the holding apart from the buildings?—Yes, we never consider the buildings at all unless the landlord raises the point that they are his and proves that they are his.

5730. I do not say it would happen in your case, but is not there some danger that a valuer, in valuing land, though he nominally values it apart from the buildings, is affected by the consideration that the buildings are there?—If it is tillage country, if it is in the north of Ireland, a holding would be of very little value if the buildings were not there; they are a very important element in any tillage farm.

5731. Is not there some danger that in the value given to the land without the house in the first instance, there is an element of the value of the house in the land; and that afterwards, if the buildings are the landlord's, and you add on their letting value to the value of the land, the landlord might be paid twice in respect to the houses?—I do not think that, because if the buildings are the tenant's it has no right to enter into the mind of the Sub-commissioner in fixing the rent, in my opinion.

5732. I was speaking of the case where they were the landlord's?—Suppose we went on a holding on which the buildings were claimed by the landlord, and were the landlord's, we would value the land on the same basis as we would where they are the tenant's, and we would add on what we considered fair for the buildings to that rent.

5733. I suggest to you that that process is dangerous to the tenant?—It could not be dangerous.

5734. I would like to see now, in valuing the land apart from the buildings (the land would be of very little value, you say, without the buildings), you say you do not introduce into the land such an element as buildings; do you then value the buildings, and if they are the landlord's add it to the rent of the land? Do not you think it would be a more speedy process to value the land and buildings together as one in the first instance, and then, if they belong to the tenant, to take off their fair letting value, and if they belong to the landlord to leave it as it is?—I do not know that it would make any very great difference with a man who was accustomed to farm, and who had a practical knowledge of land; I do not know that it would make any great difference in his mind.

5735. A retired Army officer, for instance, might make some mistake about it?—I do not know; I can only speak as a farmer, and as a farmer I would say there is not that danger.

5736. The evidence inspires me with some doubt as to the real position of the Ulster custom tenant, and I wish you to clear it up. You have

Mr. *Sexton*—continued.

a life-long experience of Ulster, have you not?—Yes.

5737. Do you, or do you not, understand that the law directs you that the landlord has no right to have a specified value, or true value, fixed in an Ulster custom case?—Well, so it appears. It appears by law that he has not.

5738. Is a tenant in Ulster in each case put to the proof of his custom, that is to say, whether the custom exists?—No; we seldom have that point raised in court.

5739. If the landlord makes no objection, you take the custom as existing?—Yes; in every case.

5740. Is the custom the general rule in Ulster?—Yes.

5741. It is?—So I understand it to be.

5742. The custom. If the landlord objects the tenant is put to legal proof of the custom?—Yes; but I may say I do not remember a case in which he had that to do.

Mr. *T. W. Russell.*

5743. The landlord admits the custom?—Yes, generally.

Mr. *Sexton.*

5744. If the custom is a general rule and the landlord by his practice admits it to be the general rule, do you think there would be any hardship in making it the presumption that the custom exists, unless the contrary is proved in Ulster?—Certainly; I do not.

5745. You think it would be a good rule?—It would, because it is generally presumed; and, as I said, we have no cases in which the point is raised, and I think it should be a generally understood thing that it was admitted all over.

5746. The Ulster custom tenant, as we understand the law (as I understand it certainly), has an unlimited right to his improvements. His right is not limited by time or by tenure, or by any question of payment of compensation by the landlord, is not that so?—Yes; that is generally the way in which the improvements are considered.

5747. Now, is there any difference that you know of, as to the facts between Ulster and other parts of Ireland, as to the tenant making the improvements, and so forth. Is there any reason why there should be a different presumption on behalf of the Ulster custom tenant, from other tenants in Ireland, as a general rule?—So far as I have dealt with cases outside Ulster, I do not think there would have been any hardship; I think it would only have been fair. I have been on quite a number of cases where we felt it was a very great hardship to the tenant outside Ulster. There is a rule prevails that tenants cannot get credit for certain improvements if they are made over 20 years, and we have found very good improvements where the landlord got the benefit of those improvements owing to that rule, and we have had cases where the landlord has captured very fine buildings, through some covenant in the lease, which were erected by the tenant; and that I think is a hardship.

5748. I should like to ask you, as a practical agriculturist, whether you think the agricultural prosperity of Ireland in the future depends greatly upon good husbandry?—Certainly; I hold that view very strongly.

Mr. *Sexton*—continued.

5749. And in that connection, would you say there is considerable need of improvements in the soil throughout Ireland?—Yes, a great deal of the soil of Ireland requires great care.

5750. Looking to the fact admitted by all the witnesses, that improvements are made by the tenant, and not by the landlord, would you make the inference, that unless improvements in the future are made by the tenants they will not be made by the landlord?—I do not think landlords will make any improvements; I do not see where it is at all likely that they would.

5751. Less likely now, perhaps, than at any former time, even?—Some good landlords did assist in making the improvements formerly, but having the law existing as it is at present, I do not think that any landlord will make improvements in the future.

5752. But it is essential to the public well-being that improvements should be made, and if you agree with me that the landlord will not make them, if the tenant does not, would you suggest it is the duty of Parliament to encourage and reward the tenant for the making of improvements?—I think the tenant should be encouraged in every way possible to make improvements, and I think there is very great room for encouragement, and very great need for encouragement.

5753. Do you think that Parliament sufficiently encourages the tenant by the practice, as we have it before us, of allowing him simply a percentage which, in 15, 20, or 30 years, may pay him the bare cost of his outlay, and putting on him an increased rent, as regards the balance of his improvements?—No; I think if that impression is in the minds of the tenants they should be as much as possible disabused of it; and I would not object, as a Sub-Commissioner, to do what I noticed was mentioned here before. I think on the face of our pink Report, it would be no harm for us to show clearly what we do allow for the improvements, because I think the impression is in the minds of a great many tenants, that notwithstanding the fact that we do give credit for their improvements, they believe we do not, and I believe there should be some means by which both landlord and tenant would be able to see the allowances made, and how much had been made, because I do not think that in fixing a rent we should do anything which we would be afraid of being known to everyone; and in doing that I may state that I think by way of a check, showing how Sub-Commissioners did the work, it would be no harm if the Sub-Commissioner had even to put down his gross rent and his deduction for the improvement; then you have the fair rent.

5754. I have been suggesting here, to witness after witness, that there is no reason why the fair letting value of the holding should not be given, and the amount deducted for improvements in the fair rent?—The gross letting value, you mean?

5755. Yes?—Speaking for myself as a Sub-Commissioner, I have not the slightest objection if

Mr. *Sexton*—continued.

if that order is issued; because, as I say, I do not think we should do anything with regard to our work that we should be ashamed to let anyone and everyone know, and the fact of the matter is, that in a page of our book we have to do it already.

5756. In your field-book?—Yes, in our field-book; and it would be merely transferring it from our field-book, which goes up to the office, on to the face of our pink Report.

5757. That important point, important to all the parties, is buried away in the muniment-room of the Land Commission?—Yes. When we go on the holding, and go over it field by field, we classify the soil under the different headings, and we make up our gross rent on the holding as we find it; we then have to add on for buildings, if they are the landlord's, and we have to deduct for want of water, if there is a want of water in the holding; we have to deduct for its bad approach, or for its remote position; or we have to add on for its proximity; and when all these additions or deductions are made up, we then have our net rent, and I do not see why that should not be stated.

5758. Now, let us keep close to the point about the improvements; where you find a short-lived improvement you may fix so large a percentage for it that the tenant would be paid back in the statutory term?—Yes, we may; and with regard to one improvement, in my opinion, that is very necessary, that is where drains are made in certain classes of subsoil which soon silt up with sand or anything of that kind, it may be very short-lived, and the tenant may in 14 or 15 years have to remake the drains.

5759. On the other hand, if the improvement is long-lived, whether he will be paid the cost depends on whether he gets another allowance in the next statutory term?—Yes; we can only deal with the one statutory term.

5760. Meanwhile he is allowed nothing for maintaining?—No; we give him the cost he has expended.

5761. Now, then, let me put it to you: you admit the importance to Ireland of improvements; you say, if the tenant will not make them the landlord will not make them; do you think it would be fair in that case that the law should dictate that the letting value resulting from the improvement should belong to the tenant?—I think, if the tenant creates them and the landlord will not create them, the tenant is the man that is entitled to get the value of them.

5762. That is just my suggestion; now, in regard to presumption as to proof: I understand that in Ulster there is a presumption (as I have understood the law) that all the improvements have been made by the tenant; but Mr. Cunningham cast doubt upon that, and in an explanation given subsequently he said that it applied only to buildings; what is the practice; when an Ulster custom tenant comes in, do you put him to the same proof that you would another tenant as to whether the improvements were made by him or legally belonged to him?—Every tenant has to prove his improvements whether in Ulster or outside Ulster; we have to get evidence with regard to the improvements

Mr. *Sexton*—continued.

whether it is an Ulster tenant or not an Ulster tenant.

5763. I will not trouble you about law, but any of us reading Section 5 of the Act of 1870 would imagine that while a non-custom tenant is obliged to prove the improvements, in the case of the Ulster custom tenant they were held to be his, unless the contrary was proved?—It would simplify our work very much if we had the power to do that.

Mr. *T. W. Russell.*

5764. May I ask whether that does not apply to buildings?—That is the point.

Mr. *Macartney.*

5765. Do you state that any of the legal Commissioners that you have ever acted with have ever held otherwise than is stated in the Act; I mean, have given the improvements to the landlord on an Ulster custom estate; I am not talking of what you do on the farm, I understand that?—Yes, in Court we always have proof of the improvements, but we have no proof of the buildings in Ulster. We never have the question of buildings before us in hearing the case in Ulster unless the landlord's solicitor gets up and claims the buildings; and then, if the landlord's solicitor claims the buildings, we put the onus on the landlord to prove that he erected them, or assisted in erecting them.

Mr. *Sexton.*

5766. But the law suggests no such distinction?—Well, that is a distinction that has always been made.

Mr. *Macartney.*

5767. What I mean to say is this: supposing there was a case of thorough drainage, have you known of a case of a thorough drainage improvement claimed on an Ulster custom estate, and given to the landlord?—Oh, no; it is not given to the landlord if the tenant proves that it is his.

5768. But when the tenant has claimed it, has it ever been given to the landlord?—No, but if the tenant by that improvement has created more value in the soil than what the improvement covers, the landlord gets it.

Mr. *Sexton.*

5769. That I never disputed, that is a different point; I agree that in regard to the apportionment of value resulting from the improvement, the law is the same in the Ulster custom case as in any other case; is not that so?—Yes, it is.

5770. I am on a different point; I have gathered from you that the tenant has a right to claim for any sort of improvement on the Ulster custom estate, no matter when made?—You mean the question of reclamation.

5771. No, I am on the presumption. Is the tenant obliged to prove more than that the improvements are there; is he obliged to prove in addition that he made them, or that they are legally his?—Oh, yes, in every case.

5772. As well as if it were a non-custom farm?—Yes, that is no matter. As I have stated, we never have had the question raised,

Mr. *Sexton*—continued.

so far as I can recollect, whether a particular holding is a holding under the Ulster custom or not under the Ulster custom; so that every case that ever came before us came before us in the ordinary way, and in each case the tenant had to prove that he made the improvements, or bring a person into court to prove that he saw them made.

5773. Except the buildings, the buildings are presumed to be his, are they not?—Yes.

5774. The law says the Ulster tenant is to have the presumption on his side altogether, and the practice is that he has no presumption on his side, except with regard to buildings. Is that so?—None, except with regard to buildings.

5775. I understand the tenant has usually made the improvements everywhere?—So far as I know, in almost every case.

5776. What has been your experience with respect to the rule that no rent shall be allowed in respect of improvements made by the tenant for which the tenant or his predecessors have not been paid or otherwise compensated by the landlord?—If the landlord has given anything with regard to making the improvements, or making drains, we give him credit for it. Suppose we go on to a field and find that there is a hundred perches of drains in it (we have had several cases where the landlord did give 6*d.* or 1*s.* a perch towards the making of those drains), we first value the land as we find it, and instead of giving the tenant credit for all the outlay, we give him credit for the portion of the outlay that he had to make in carrying out the drainage.

5777. To what extent have you found that improvements by the tenant have been paid for or otherwise compensated by the landlord?—In very few cases has that happened. We have had cases where the tenant was bound by a covenant in his lease to make certain improvements.

5778. Would you see any hardship in a rule of law by which, unless in the case of such a covenant or a specific enactment, the tenant should be free from the operation of the present rule?—No; I think where the tenant has in fact done all the improvements, that he should be freed from it.

5779. The rule for presumption is very complicated. If you will follow me for a moment, there is no presumption in favour of the tenant in respect to improvements made before 1850, except buildings and reclamations?—Yes.

5780. Then in regard to between 1850 and 1870 there is a very complicated rule which I will not endeavour to expound; and in regard to improvements since 1870, the presumption is on the side of the tenant, I understand (that is the law), would you see any hardship, looking to all the facts that I think are admitted, first that the tenant makes the improvements, second that the landlord when he makes them is better able to prove them than the tenant; in a general presumption that the improvements are made by the tenant unless the landlord proves the contrary?—If you carry the principle of presumption, I would say that every improvement that the Sub-Commissioners found on a holding, no matter what its nature, that added letting value to the holding, should be given credit for.

Mr. *Sexton*—continued.

I myself have drains in quite as good working order at the present moment (made in 1847), as they were 20 years ago.

5781. And putting aside these ingenious limitations as to time, tenure, and compensation, you would make the law this, that the Commissioners who went on the farm and found improvements there suitable, and adding to the present letting value, should give the tenant the benefit of these improvements, unless the landlord proved that the improvement belonged to him?—I would, because I think it is only fair that where improvements are found to exist, and that they are a benefit to the holding, and that they were made by the tenant, I do not care what their age is, if they are still continuing to be a benefit to the holding I think it is a hardship to deprive him of them.

5782. And do you think the public interest dictates, that as the landlord will not make the improvements, and as the latent value of the land will remain useless if left to him, the tenant who improves the latent capacity of the land should have the letting value?—I hold that the man who has the enterprise to create any commercial value is the man that is best entitled to get it; and if the thing would lie dormant without that capital being expended, then I think there should be no doubt about it.

5783. The rents upon which you operate are, I take it, the old rents that were fixed before 1870?—In a great many cases we have no evidence before us of any change in the rent.

5784. Have you ever had evidence before you, in any case, that the rent was a rent which had been reduced since 1870?—Oh, yes; we have had cases where the rent had been reduced.

5785. Not many cases were they?—Odd cases now and again crop up.

5786. In a general way you act upon rents which were fixed when the tenant was subject to any rent the landlord chose to impose, and to eviction at any time, before the Act of 1870, I mean?—That may have been the case, and it may not have come out before us in evidence. We have operated in a great many cases where the landlord gave reductions as temporary abatements, and very substantial ones.

5787. Yes, but the main point I am putting to you is this, that the rents upon which you operate are the rents, as a rule, which were fixed before 1870; and that before 1870, as we know, the tenant was liable to any rent, and liable to eviction?—The great bulk of them were all fixed before 1870.

5788. Suppose the case of a farm where no question of improvements arises (if you were asked by an outsider to value the tenancy for him and to tell him what would be a fair rent for him to pay from year to year), would you fix that rent at the same figure that you fix it at for the present tenant; the inhabiting tenant?—I hardly understand your question.

5789. Well, it is a question of some importance, I think; you generally fix the rent for the sitting tenant, the man who has the interest in the holding?—Yes, the occupying tenant; he must be in occupation to get the rent fixed.

5790. Suppose there were two farms side by side, similar in condition and value, one of them occupied

Mr. *Sexton*—continued.

occupied by a present tenant and the other vacant, and that an outsider wanted the second of these farms, and asked you to fix the rent for him that he ought to pay for that farm, would you fix the rent of the two farms at the same figure?—It would depend on our instructions; if we were asked to fix them on the same basis we would. But suppose the farm that was not occupied was in the hands of the landlord, and that the landlord had acquired the tenant's interest; in that case we should put a different rent on as compared with the farm where the tenant was in occupation and had the tenant right or interest in his own hands.

5791. Then the legal interest of the tenant is an element in fixing the rent?—Oh, certainly; in Ulster the tenant has almost as much interest in the holding as the landlord.

5792. But everywhere in Ireland now the tenant has two distinct legal interests, has he not; he has the right of compensation for disturbance?—Yes.

5793. And the right to compensation for improvements; I do not think he has the right to sell the tenancy; but he has the right to stay there for ever at a fair rent?—Yes, and I think there is very little difference made by most Sub-Commissioners in fixing a rent, whether inside Ulster or outside Ulster; that right is recognised, I think, generally.

5794. Does the possession of that legal interest on the part of the occupying tenant affect the amount of the fair rent materially?—Oh, yes, it does.

5795. To what extent; is there any principle?—You cannot deal with it on general principles, because you have to take into consideration a number of things in finding out the difference; the situation, its proximity to a town or to some market, and in fact you must, in fixing a fair rent, deal with each individual case on its merits.

5796. What you call the rent in the case of the person coming in, in the supposed case I put to you, is a competition rent?—Yes.

5797. The difference which you allow to the present tenant, because he is in occupation and has the legal right, brings it down to what you call the fair rent?—Yes; we might, perhaps, put 20*s.* an acre on as fair rent, and 30*s.* as competition rent.

5798. The statute, however, gives you no specific direction now; it only says you are to have regard to the interest of the tenant?—Yes.

5799. Would you think it expedient that Parliament should give any explicit direction as to how it should be measured where the tenant has the legal interest in it?—I do not know; I can only speak for myself. I think the more instructions you give us of that kind, the more we will get mystified, in all probability.

5800. But if this instruction were given, the less you might mystify us; we are considerably mystified at present?—That should be one very important thing before the Committee, to try and get rid of a little of the mystification that exists in the minds of the Sub-Commission and others, even up to the Court of Appeal, because nobody seems to know at the present moment where they stand. We heard one case last

Mr. *Sexton*—continued.

year in Armagh beside Keady. We dismissed the case owing to some decision given by Mr. Justice Bewley; the case was appealed and went before him, and he sent it back to us to get a fair rent fixed owing to some decision given by the Court of Appeal, and a fortnight ago we fixed the same rent again on the same holding after a second inspection; so that I think, with regard to the question of town parks and a number of things, it would be a very good thing if the mystification was got rid of.

5801. Would it not be an immense public gain if we had a statute which would put an end to these mystifications, and enable people to know what is really meant?—There are a few things in which we follow the lead of the cases from the Court of Appeal and fix rent, and then inside six months we have to turn round and adopt a different practice, especially with regard to town parks.

5802. Well, you are struggling with adversity. For all I can learn to the contrary, one Sub-Commission may fix the rent of a present tenant at a competition figure, and another may give him a liberal allowance in respect of his legal interest. I see nothing in the law (and you will pardon me if I say nothing in the practice) to deprive the Sub-Commissioner of any discretion he may like to use?—The Sub-Commissioners are free agents to a very great extent; but there is a very different impression abroad; that is, that we receive our instructions with regard to the way in which we should deal with the cases; and I think it is only honest and fair to the Land Commission to say that from the day I was appointed up to the present I have never had a line or word of instruction of any kind; and I think every Sub-Commissioner is, more or less, quite as free an agent; one may adopt one view, and another may adopt another view.

5803. I will sum it up in this way: do not you think it is almost essential that the intention of Parliament should be declared in some mode so clear as not to admit of misinterpretation?—I think any Act dealing with the land question, which is a question that is very hard for most people to understand (it has been in the past), should be so clear, or at least as clear as it could possibly be made, so that there should be no doubt or difficulty in the minds of those who have to administer it. I am strongly impressed with the idea that there should be at least as clear and definite a line laid down as possible for those who have to administer the Act as they could go on.

5804. We are told that in the last 13 years, while the Land Acts have been in operation in Ireland, the rents in England by voluntary acts, where the tenants have no legal interest in the holding, have been reduced by 40 per cent.; and we find that the reductions in Ireland, where the tenants have a legal interest, have been on an average only 20 per cent. Can you make any observation upon that?—I do not know anything about the English land system at all.

5805. I should like for a few minutes to get at your views as to the amendment of the law. You are aware, I believe, that out of 300,000 cases in which rents have been fixed, 120,000

Mr. *Sexton*—continued.

have been fixed by agreement out of court?—So I understand, somewhere about that.

5806. It is a fact, I believe, that the reductions of rent in those cases fixed out of court have been materially less than in the cases heard by the courts. It appears from the returns?—Yes, from the returns it would appear that that is the case.

5807. I will again, although you have been already asked about it, direct your attention to this very remarkable paper handed in by Mr. Bailey, your legal commissioner, in which he gives 50 cases taken from four counties where it happened that agreements were made outside but not filed, and, therefore, came to be considered by the Sub-Commission Courts. Have you that paper before you?—Yes, I have.

5808. I have added up the columns, and I find that the rents agreed upon out of court were reduced 27 per cent. further when the cases came into court. Does that suggest to you any reflection in regard to the 120,000 cases which were fixed out of court, that the people who fixed them were barred by some influence from coming in, that they were not as free to come in as those who did come in?—That may have been an influence, but I can understand, coupled with that, that in rents that were fixed, even by private agreement in 1882 or 1883, a tenant may have made the same mistake, or may have fixed the rent on the same basis that Sub-Commissioners acting in these years did; and I think the general testimony of the Sub-Commissioners who fixed rents in 1882 or 1883 is, that if they were to fix the same rents now they would make a very perceptible change in their valuation.

5809. That, so far as it goes, would seem to indicate that if the statutory term was shortened by law, the shortening should be made retrospective so as to allow of those whose rents were fixed in the early years following the Land Act to come in again before 15 years?—Oh, yes, if you shortened the term.

5810. We know that out of 486,000 agricultural holdings, only 300,000 have been fixed. Now when we consider that 186,000 have not come in at all, either through legal exclusions or otherwise, and that 120,000 others have been fixed out of court, does it suggest to you the importance of making a clear way to the Land Court, removing any obstacles that may exist to the injury of the tenant?—I think that many obstacles at present existing may be cleared away, and that still the landlord need not suffer very much by so doing.

5811. Suppose you found in a case before you that the old rent was very excessive, very excessive, would you think it fair that the court should have power to protect the present tenancy by dealing with arrears as in Scotland?—Well, that is a very big question to answer. There are plenty of tenants in Ireland, no doubt, who have got into arrears (notwithstanding the fact that they have been industrious and frugal), by having a very excessive kind of landlord, giving them no abatement; but there may be other cases where the tenant through negligence and carelessness may have got into arrears.

5812. I put it to you as a matter of equity; If you found the old rent was high in comparison with what you thought fair, and a presumption arose that the tenant had been struggling against hardship and hard times, would you think it fair that the court in that case should be able to protect him against his past position by reducing the arrears or declaring how they should be paid?—Well, if everything connected with the case went to show that the tenant had been doing his very best to pay an impossible rent, it would be a case in which I would have very great sympathy. It would be only admitting the principle of the Arrears Act. I do not know whether it would be wise to do it or not.

5813. It might save people who might otherwise be sacrificed, might it not?—Well, if it was preventing a tenant from getting into court, it might be well to get rid of it some way or other, doing what was fair between both parties.

5814. Where the tenant has now any right, such as turbary, mountain grazing, commonage, or sea-weed, which he exercises now, would you be in favour of authorising the court to deal with the right as appurtenant to the holding, and to deal with it in the rent so as to prevent any action of the landlord in connection with the right depriving him of his right after the present tenancy had been fixed?—I think everything connected with the holding which is appurtenant to it and has been enjoyed by the tenant in the past, should be continued; and the way in which we always deal with a matter of that kind is this: if a tenant has had a turf bank in connection with his holding, which was included in the rent of the holding, we always fix the rent on the assumption that the tenant is to have that right continued during the 15 years, whether it is inside the ambit of the holding, or outside the ambit of the holding. If the tenant is paying a separate rent for the turf bank outside his holding, we do not deal with it; the same with regard to sea-weed, and with regard to mountain grazing. If we have a turf bank belonging to the tenant inside the holding, and which is likely to exist for only about five years or six years, we consider what it is worth per year to him, and multiply it by the number of years we think it will last, and then divide that by the 15 years; so that he is paying the rent for 15 years, and he may use the turf whatever length of time he likes.

5815. My suggestion is that whether the subject of the right is within the holding or beyond it, so long as it is on the estate, or whether it is subject to a rent or not at present, if it is a right exercised by the tenant you should secure its continuance in the rent as an element of the statutory tenancy?—Yes, I think where a tenant has only had a turf bank, or a mountain grazing, or a right of sea-weed, in the past, he should not be deprived of it; if it had been an appurtenance for a number of years to the holding, it should be continued, invariably we do continue it, and we seldom have an objection from the landlord; indeed, we never have an objection with regard to it.

5816. But you think with regard to these cases

Mr. *Sexton*—continued.

cases, which you are now impotent to deal with, you should have authority by law to deal with them?—I think we should, where a tenant has enjoyed it in the past.

5817. As to appeals I understand your plan to be this, that in advance of the sitting of the Sub-Commission, and when notifying the time of the sitting of the Sub-Commission to the landlord and tenant, you would notify them also that two valuers would inspect the holding before the Sub-Commission valuers?—Yes, I think that should be done; that would be, more or less, like reversing the present system. I think the last court should be the court that would inspect and hear the case on the spot.

5818. Would you think it essential though that the landlord should admit that the tenant was a person entitled to have a fair rent fixed, so that no question of law should arise?—Well, it is rather a difficult point to decide that.

5819. What I mean is this: that the two valuers who first go upon the holding should not be exposed to any contention upon a matter of law between landlord and tenant?—Certainly not; but if you make an application to both parties, and both parties agree to have the holding inspected, it is more or less to be taken that there is no point of law, and consequently I do not think there should be any discussion on the holding after that agreement has been entered into.

5820. Would it not be necessary also that the landlord should agree that the tenant's claim for improvements was just, that there should be no legal contention about improvements, or, in fact, no substantial contention about the improvements?—Yes, I think that should be an essential part of the agreement; that the landlord admitted that the claim made for improvements was one that he would not contest.

5821. These points being satisfied, you would have the rent fixed, and, unless within a certain time objection was made, that would be a statutory rent?—Yes, but I would leave it open to both parties to appeal to the Sub-Commission on value.

5822. Upon value?—Upon value.

5823. Upon everything, in fact?—Upon everything.

5824. The decision would be final as to value?—Yes, certainly.

5825. Then the appeal would run as at present, upon questions of law?—Yes.

5826. Just to get your mind about exclusions from the Act, let me ask you this: do you think it proper that the interest of a present tenant should be destroyed by any legal circumstances, such as the death of a limited owner, or the ejectment of a middleman, or anything over which he has no control; do you think that when a present tenancy is once fixed the law should protect it against incidents for which the tenant is not responsible?—I think it is very hard on a tenant to be deprived of his right through any incidents of that sort, because our experience of middlemen is a very serious one as far as the tenants are concerned.

5827. Would you say that there should be a rule of law that a present tenancy once created should not be destroyed except by the wilful act or default of the tenant himself?—I would.

Mr. *Macartney.*

5828. Even when the fair rent has been fixed without any jurisdiction?—In the past.

5829. No, I am taking the first case: suppose you had fixed a fair rent in a case where you had no jurisdiction to fix it, do you mean to say that, in your opinion, it ought to stand; I only want to know that?—But no rent could be fixed if the tenant had no standing to get a fair rent.

5830. But it has been done?—It may be done.

5831. I rather thought that that was the point Mr. Sexton was putting to you?—The light in which I looked at Mr. Sexton's question was this: suppose a tenant had been a recognised tenant under a landlord for some years, should there be anything to prevent, by law, that tenant continuing as a tenant of that holding for the future?—I would say no, there should not.

Mr. *Sexton.*

5832. Now in regard to sub-letting, do you think that a tenant should be excluded because he makes a sub-letting to labourers who are required in the vicinity to a reasonable extent, or that in such a case the consent of the landlord should be necessary, so long as the interest of the landlord in the holding is not substantially injured?—I do not see how the building of a labourer's cottage takes away from the value of the holding, but in my opinion there should be a limit to sub-letting. I think there should be no sub-letting on a holding that would give the sub-tenant a right under the present Land Act to come into court to get a fair rent fixed; there should be no subletting beyond half an acre. My opinion is that it is a very hard case where the tenant is excluded from the operation of the Land Act because he has a labourer's cottage or two on his holding, and perhaps it may be that inside of six months you may have the labourers of the district coming with a memorial before the guardians, asking them to build cottages in that very district, when they would have to come and take half an acre in the district upon which to build them.

Mr. *T. W. Russell.*

5833. Are you aware of a case in which a fair rent has been fixed for a sub-tenant?—Yes.

Mr. *Sexton.*

5834. Subject to that limitation, you think sub-letting need not be a case of exclusion; that you have stated?—No, I think there is very great hardship in connection with sub-lettings of that sort; I think it is a very great hardship that a tenant, to be able to get into court, should be obliged to turn his sub-tenants out and drive them into the towns from a country district; we have as it is too much of a tendency in the minds of the labourers to go into the towns, to leave the rural districts, and I think they should be encouraged to stay where they are.

5835. With regard to town parks, do you see any greater difficulty in fixing what you call the accommodation value of a town park because it happens

Mr. *Sexton*—continued.

happens to be desired by the inhabitants of a town than in fixing the proximity value near a town, which you do every day?—I do not think there should be; I think all the elements in connection with the town and with the case should be taken into account, and I do not see why Sub-Commissioners should not arrive at what would be the fair value, taking all the facts of the case into consideration.

5836. You see no real obstacle to dealing with them equitably, as you would with any other case of fair rent?—No; I think the way in which cases of that sort should be dealt with would be to go and value the land in the ordinary way and add on 100 per cent., if necessary, to bring it up to what would be fair, considering the position in which it was placed and the town that was adjoining.

5837. I understand you see no good reason for shutting out the tenant from fair rent; because, to a small piece of land there is a mill, a fishery, receipts of town tolls, or something of that sort, attached; so long as the holding is substantially agricultural or pastoral?—If it is substantially agricultural, I think there should be a fair rent fixed, and, I think, at the same time the landlord should have every element connected with it taken into account, and that he should get all those additions added on to the holding, as if it was in an ordinary agricultural district.

5838. Do you accept the principle of "once demesne land demesne land for ever," or do you say that if it has been used for agricultural pasture for a considerable period, and there is no evidence of an intention to resume on the part of the landlord, a fair rent should be fixed?—I think a fair rent should be fixed, and I think the Court of Appeal has held that it should be fixed. There has been a case, I think, where a demesne has been undemesned.

5839. There has been a case where land, said to be demesne land, was held to be a fee-farm grant?—Yes, I know that.

5840. It was held then that even if the fee-farm grant should last till the Day of Judgment, the land could never be undemesned; is that a reasonable result of law, do you think?—I do not think it is; but I was under the impression that there was one case where the Court held that a demesne had been undemesned.

5841. Looking to the economic state of agriculture in Ireland, and the probable extension of pasture, would you be in favour of widening the limit for demesne and pasture tenants; do you see any reason why, it being clear that pasture is as obvious a tenancy in some parts of Ireland as tillage in others, the pasture tenant, who is compelled by the conditions of agriculture to use his land for pasture, should be shut out any more than the agricultural tenant?—I think it is a very hard thing that pasture tenants should be excluded from the Land Act, because *pasture* is one way of using the land in an agricultural sense.

Mr. *Macartney.*

5842. In an agricultural sense?—It is agricultural, in a sense.

5843. As an expert you say that?—I understood that anything that was connected with a farm was agricultural; that whether you grazed it, tilled it, or did anything else with it, you used it agriculturally.

Chairman.

5844. Generally?—Yes. I think that stock is an essential part of agriculture. You cannot keep stock without grass, and you cannot keep stock without hay.

Mr. *Sexton.*

5845. Take the case of two men: the first man devotes his land to high cultivation, that is one kind of agriculture; the other uses his land as a shepherd; both are farmers equally, are they not?—I think they are; one is a sheep farmer, the other a tillage farmer.

5846. My last question is this: Would you say, generally, looking at the intention of Parliament in passing these Acts, and the necessity of the Acts, that every man in Ireland who works land for profit, whether agriculture or pasture, ought to have a fair rent fixed upon his holding?—I think, generally, they should, and I think that those exclusions are calculated to create great unrest in the minds of agriculturists generally.

Mr. *Dillon.*

5847. You said that farms in County Armagh were very highly valued in the Poor Law Valuation, did you not?—Yes.

5848. You were asked whether the prices at present were lower than the scale on which the valuation was conducted, or higher, and I think you said they were not much higher?—I think they are not, speaking from memory.

5849. You refer, of course, to the scale mentioned in Mr. Griffiths' valuation?—Yes.

5850. Has the cost of production increased or decreased in Ireland since 1852?—Oh, it has increased very much; even since I started to farm myself it has increased very much.

5851. The cost of production and the prices are an element in fixing the value of land?—A very important element in a tillage country.

5852. If you were asked now to value a holding in Armagh on the basis of the present cost of production, and Griffiths' scale of prices, do you believe you would put the present Poor Law Valuation upon it?—Supposing I was valuing it for the Poor Law Office.

5853. No, suppose you were valuing farms for a fair letting value, and that you were ordered to do it on the present cost of production, present wages, and so forth, and Griffiths' scale of prices was put into your hands, and you were ordered to act on that scale of prices, do you believe your valuation would be as high as the present valuation in County Armagh?—Certainly not, because the cost of labour is very much more now than it was then.

5854. Let me ask you this question; it is a question of belief. Do you believe that the valuers in Ulster, or any part of Ireland, have really worked on that scale of prices, or have they worked on the enormously increased scale of prices that prevailed immediately after that scale was drawn?—That is, in fixing a fair rent?

5855. No, in fixing the Poor Law Valuation?—I think

Mr. *Dillon*—continued.

—I think they operated upon the scale of prices put before them, but I may say that we have found Griffiths' valuation varying so much that we pay almost no attention to it; we pay no attention to it at all.

5856. You mentioned your principle of allowing proximity value; you must have some normal line from which to proceed?—Yes, we try to adopt a normal line.

5857. Have you got any idea in your mind what is your normal line as to the position of a holding?—Supposing we were dealing with a town that had 2,000 inhabitants, we would not extend our proximity value so far out as we would if it was a town with 10,000 inhabitants.

5858. My point is this: I confess this point has puzzled me a good deal in this inquiry. The holding must have some position in the world to have any value at all, must it not?—Yes.

5859. Have you any idea in your mind what is the normal position to which no extra proximity value attaches?—One great element in our minds, in starting the question of proximity value is, first and foremost, is it a town in which there is a general market for farm produce, that is, for oats, for pork, for cattle, for hay, for turnips, for potatoes; and is it within a certain radius of a town where there is this good market? We invariably take in the question of proximity value there; but if you come down to a town in which there is no market for farm produce, and if they have to carry the farm produce a number of miles to another town to get a market, we do not take into account the question of proximity value.

5860. Have you any clear idea as to what would be your normal distance; your normal market? My point is this: a man's holding can be of no value at all to him unless he has somewhere to dispose of his produce?—Yes, he must have a market.

5861. What would you consider to be the normal distance from the market?—From a particular town; from a particular market.

5862. What would you consider to be the normal advantages which a holding should possess in Ireland as regards proximity to a market?—I think when a holding gets an ordinary-sized town or an ordinary market, say between three and four miles away, the proximity value ceases.

5863. Let me put a specific case: there was an instance the other day, in my own district, where proximity value was added because the holding was within a certain number of miles, I forget now the exact distance, of the town of Ballyhaunis?—I have wrought at Castlerea, Ballyhaunis is a little further on.

5864. Would you consider that the proximity to the town of Ballyhaunis would be an element to add to the rent; I mean now apart from the town park?—I would think it would be a very small element. I would require first and foremost to have some proof with regard to the facility that there was for marketing the farm produce in the town of Ballyhaunis. The proximity value of a town situated in the west of Ireland is not very great.

5865. You have said that in fixing a fair rent,

Mr. *Dillon*—continued.

you take into account the occupancy interest of the tenant in Ulster?—Yes.

5866. And you have worked out of Ulster?—Yes, I have.

5867. You seemed to say, with some hesitation, that you thought that in working out of Ulster that element was also taken into consideration?—Yes it is, I believe; I am sure it is.

5868. You have worked in the county of Roscommon, have you not?—I have.

5869. In fixing a fair rent in the county of Roscommon did you take into consideration the occupancy right of the tenant?—Yes.

5870. Now on what principle would you estimate that occupancy right, because, until recently of course he had no occupancy right except the whim of his landlord?—We might not take it into account to the same extent that we would do in the province of Ulster, but I think the Land Act has created every tenant in Ireland a tenant who is entitled to get a fair rent in respect of his occupancy.

5871. That is the Land Act of 1881?—Yes, we consider he has rights, because the Act provides that he shall have them as long as he pays his rent.

5872. According to your own statement, does not that depend upon the view taken by the Sub-Commissioners?—Yes; and I can only speak for myself.

5873. You only speak for yourself?—Yes.

5874. Therefore it is perfectly competent for the Sub-Commissioners, if that happened, to allow for it?—Yes; and I think most Sub-Commissioners do allow for it.

5875. You can only speak for yourself?—I can only speak for myself and my colleagues; those who have wrought with me.

5876. What I want to be clear about is this: I hold, myself, that he has a strong moral occupancy right; but is that your idea of the case, or do you base your idea of the occupancy right on legal rights?—I base my opinion of that upon the legal rights under the Act. I hold that a tenant has a right, if he is in a position to avail himself of it, so long as he pays his rent, to hold that right.

5877. Under the Act of 1881?—Yes.

5878. You said (when asked to distinguish between the fair rent you would fix on a holding in the possession of a tenant and on a holding in the hands of the landlord) that the distinction you would draw would be that, in the case of the holding in the hands of a tenant, you would make the rent for the occupancy right of the tenant a fair rent, and in the case of the holding in the possession of the landlord you would fix a competition rent?—Yes; we would fix the two interests together on behalf of a landlord.

5879. And treat that as a competition rent?—Yes.

5880. Are you aware that one of the Sub-Commissioners informed us that the "competition rent" was a ridiculous rent that nobody would pay?—It depends upon who fixed it and what it was fixed at.

5881. Would that be your definition of a competition rent?—No; certainly not. I do not think that any rent should be fixed, whether a competition rent or a fair rent, that did not

Mr. *Dillon*—continued.

consider all the elements in both, and that was not fixed on a basis in which either or both would be fair.

5882. Do you mean by a "competition rent" what you consider with your experience a solvent tenant could reasonably undertake to pay, or is it a rent such as would be got by what is called "canting" the farm in the market?—If I was asked to fix a competition rent inside Ulster, I would, first and foremost, value the holding, find out what I thought was a fair rent, and add to that what I thought was the fair interest for the tenant who had it, and have as the competition rent a rent that a tenant would step in and pay without having to pay any tenant right.

5883. But you would not be guided by the result of the competition in the market?—If you put up the rent to auction, I have no doubt you will find plenty of fools of tenants who will give too much.

Mr. *M'Cartan.*

5884. Particularly if they had to give bills instead of money?—Very often you will find the man who is the best to give in the matter of an offer is the man who is most behind in paying.

Mr. *Dillon.*

5885. Am I right in supposing that you are in favour of abolishing the exclusion of town parks from the right to get a fair rent fixed?—Yes, I would be, with certain restrictions; I think any man who has held a town park in the past and used it should get it; I would give the landlord every penny he was entitled to get for its position, &c.

5886. I quite understand that you would give him the full value of the land. Have you had much experience in inspecting the town park lands or lands in the vicinity of a town?—Yes, we have had some experience.

5887. Is it, or is it not, a fact, that the improvements on some of these holdings have been very small?—In some cases they have been; but, in the majority of cases they are exceedingly well cultivated and highly manured.

5888. I mean improvement brought about by high cultivation of the land?—Yes.

5889. As a rule, is it not very highly improved land?—Yes.

5890. Is it your experience that these improvements are altogether the result of the occupiers' money?—Oh, yes, they are; because very often a man who holds a piece of land outside the town has manure that he disposes of on it.

Mr. *Macartney.*

5891. You are speaking of "manure"?—It is highly manured in the majority of cases.

Mr. *Dillon.*

5892. So that, as a rule, they are highly manured lands?—Yes, so far as treating them well is concerned they are all well treated.

5893. Have you come across any cases in which the landlord claimed for buildings or other improvements in which these buildings or other improvements were carried out by money borrowed from the Board of Works?—Well, we do not often have it stated in evidence whether the landlord has borrowed from the Board of Works or not.

Mr. *Dillon*—continued.

5894. Do you recollect any case of the kind?—I do not at the present moment, but we have had what we consider very high valuations with regard to buildings when the landlord claimed them.

5895. If you have not come across a case of that kind, I will not ask you any question about it. I only want to know on what principle you deal with cases where the landlord has carried out improvements, but carried them out with money borrowed from the Board of Works?—I do not remember any case of that kind.

Mr. *T. W. Russell.*

5896. You have told the Committee that when you came upon a farm, and you found the tenant had expended money upon improvements, you made an allowance for that?—Yes.

5897. Have you heard any cases under the Rent Redemption Act?—Yes, we have heard a great many cases in County Armagh.

5898. Upon what principle did you act under the Rent Redemption Act; we have been told here, that, in the case of fixing a fair rent under the Rent Redemption Act, the entire improvements go to the landlord, that the tenant gets no credit for them?—Under fee-farm grants that is the case.

5899. In the case of fee-farm grants under the Rent Redemption Act, that is the case?—Yes.

5900. Then there is no question that under the fee-farm grant all the tenant's expenditure is confiscated in the interest of the landlord?—Yes, as the law stands at present, we have no other option than to give the landlord credit for both buildings and improvements.

5901. Then that is beyond denial?—We fixed a few cases before I left to appear before the Committee in which we had to do that.

5902. Now I find here that the Appeal Court operated upon your proceedings in Armagh?—Yes.

5903. I believe that the fixing of this fair rent caused some sensation in Armagh?—On that estate that was mentioned here before, the Shaw Estate, I suppose they did, because we gave them a reduction of 48 per cent. all round on about 84 cases.

5904. Were these the Trinity College leases?—Yes, Trinity College holds as head landlord.

5905. That is what I want to find out; Trinity College holds as head landlord, and the landlord who was before the Court was a middleman?—I could not really tell you whether the man holding from Trinity College was the man we were dealing with, because it came out in evidence there were two or three middlemen landlords; in fact, I believe, with regard to these particular Shaw cases, that one landlord had surrendered before we dealt with the cases, and that the landlord we dealt with is now surrendering, and that after him there is another landlord before they come to Trinity College. I think in those cases there were three, but a landlord named Norton had surrendered before we had anything to do with the cases.

5906. Then

Mr. *T. W. Russell—continued.*

5906. Then I take it, the head landlord was Trinity College?—Yes; a great many landlords were holding under Trinity College.

5907. Trinity College is the head landlord?—Yes.

5908. In these cases there were at least two, and in some cases three, middlemen you say?—Yes.

Mr. *Sexton.*

5909. Do you mean between Trinity College and each tenant?—Yes.

Mr. *T. W. Russell.*

5910. What I am coming to is this: Surprise has been expressed by Mr. Brodrick to-day, in some of these Armagh cases, at the magnitude of the reductions given?—Yes.

5911. Ought it to cause any surprise when four landlords are trying to pull rents out of the farm, if the body sent to revise them find the rents abnormally high?—Well, as a rule, we always found where we had cases of middlemen that rents were high; and that is one reason why I said that in my opinion it is a great injustice to a tenant to be deprived of his interest in his holding because a middleman is ejected.

5912. An intervening middleman on the same holding?—Yes. The way in which it is done is this: Trinity College holds as head landlords an area about four miles by five in County Armagh in this particular district, and they have sublet to quite a number of people on perpetuity leases, and these people have again farmed them out to another middleman at an increased rent on another perpetuity lease, and in this particular instance, I believe, to a third man, on the same tenure. Without the Land Act stepping in at all, the third man found he could not get his rent, and he surrendered before we dealt with the cases. The trustees of Shaw that we dealt with were the second middlemen after Trinity College; we found them exceedingly poor tenants in an exceedingly poor district, and the great majority of them owed four, five, or six years' arrears of rent.

5913. Whatever may be Mr. Brodrick's opinion of your reductions as a Sub-Commission, the fact of the matter is that between your Sub-Commission and the Land Commission valuer on these 87 cases, the difference was 10*l.* 6*s.* 6*d.* on the whole?—Yes, but in round numbers our reduction was about 48 per cent., and theirs was about 48¼ or 48½ per cent. So far as we are concerned we do not care what anyone's opinion is, landlord or tenant.

Mr. *Sexton.*

5914. I think I gather from you that the higher Court, the Land Commission, made the reduction still larger?—The valuers for the Chief Commission Court were almost a half per cent. lower as a rule than we were.

5915. That is, the reductions were higher?—Yes, they gave more than we did.

5916. It was an increase of reduction; a further reduction?—The difference between our fair rents as a whole and the valuation of the two Lay Commissioners for the Chief Court as a whole was 10*l.* 6*s.* 6*d.* on some 80 cases; they reduced them by 10*l.*

5917. Let us have it clearly: the valuers for the Appeal Court valued in such a way that they gave the tenants 10*l.* more of a reduction than you had given?—Yes.

Mr. *T. W. Russell.*

5918–19. The figures of the Sub-Commission being 389*l.* 6*s.*, and the Court valuers' figures 378*l.* 19*s.* 6*d.*, being 10*l.* 6*s.* 6*d.* less than the Sub-Commission rents?—Yes.

Chairman.

5920. Who appealed, the landlords or the tenants?—The landlord in every case.

5921. The landlords got the worst of it?—They did.

5922. They had better not have appealed?—The rents were nearly all lowered.

Mr. *Macartney.*

5923. These were trustees, I understand?—The trustees of Shaw; the property is in the hands of a receiver at present.

Mr. *Sexton.*

5924. The rents were confirmed, or reduced?—I think I am speaking correctly in saying that they confirmed every rent.

Mr. *Macartney.*

5925. At the time the appeals were lodged, when you were on the estate, was the estate then in the hands of a receiver?—Yes.

5926. Under the jurisdiction of a judge?—Yes, it was.

Mr. *T. W. Russell.*

5927. I suppose it would not be too much to assume that this practically wipes out the middleman?—Well, we heard afterwards that this middleman we were dealing with was making arrangements to surrender.

5928. That is my point: assuming the middleman, in such a case, to be wiped out, and it is not a large assumption in the face of these figures, are you aware that, although you have fixed a fair rent for these 87 tenants, the moment the middleman ceases to exist these tenancies are determined in law, if the middleman is ejected for non-payment of rent?—So I understand the law, but I am not a lawyer.

5929. We had it from Lord Justice FitzGibbon, whose law, at all events, cannot be questioned, that a tenant in that position is just in the position of any ordinary man who holds any property on a defective title; that is what has been laid down to the Committee by Lord Justice FitzGibbon. Now, what I want to ask your opinion about is this: assuming that under these circumstances the title of these unfortunate people is a bad title, is that any reason why, when the limited owner disappears, the law should make these men into future tenants, incapable of getting a rent fixed?—I think it would be a monstrous injustice.

Mr. *Sexton.*

5930. And liable to eviction?—And liable to eviction, yes, because the difficulty is altogether created by these middlemen.

Mr. *T. W. Russell.*

5931. It arises also in the case of other limited owners. My point is this, that while the tenancy determines at law (and that we cannot question), is their any reason why, given the determination of the tenancy, the tenant ought to be put out of Court, and not be able to have a new tenancy created?—No, I do not think there is.

5932. The only other question I have to ask you arises out of a question by Mr. Sexton on the point of the increased letting value being given to the landlord. You stated, in reply to Mr. Sexton, that you thought the tenant had the best right to any increased letting value consequent upon his own expenditure?—Yes, if it is consequent upon the expenditure of the tenant.

5933. You are aware, are you not, that for all practical purposes, the Land Act created a partnership between the tenant and the landlord in the land?—Yes.

5934. In Ulster it is called "dual ownership"?—Yes.

5935. What do you think in that partnership belongs to the landlord; given a partnership created or given this dual ownership (which roughly expresses the scope of the Land Act of 1881), what do you think is the property of the landlord in that partnership?—The property of the landlord is what the land is worth, minus the expenditure in working it, and the rent and taxes and so forth.

5936. Would it be a fair thing to say, as the Court, in Adams *v.* Dunseath said, that the property of the landlord is the soil with its inherent qualities, and that the property of the tenant is his outlay in improvements upon that soil. Would that be a fair distribution of the partnership?—That gives all to the landlord beyond the tenant's expenditure.

5937. And his occupation right, of course?—Yes.

5938. The soil was there before the tenant went there?—Yes.

5939. That was the property of the landlord previous to 1881; that is not disputed?—Yes.

5940. Under the Act of 1881 the tenant, because of his improvements on the soil and his property on it and in it, was made a partner. Now, I ask you, would it be a fair distribution to say that the soil with its inherent qualities is the share of the partnership of the landlord, and that the improvements and the outlay of the tenant belong to himself, and that that is his share?—Yes, I think it would.

5941. You have said that you would give the whole of the increased rent, or rather you have not said you would "give it," but you have stated that you think the tenant has the best right to it. Do not you think the decision which Lord Justice FitzGibbon has told us (which is really the decision of Adams *v.* Dunseath, that the tenant should have an ample protection for his expenditure and for his improvements, and that the Court should judicially decide how much of the increased letting value belonged to the landlord and how much to the tenant) is more equitable than the proposal that the whole of it should go to the tenant?—Oh, yes, it is; but where there is an inherent value in the soil, and the expenditure of the tenant in creating the inherent value of the soil that is lying dormant has produced profit, the landlord would be entitled to some of it.

Mr. *T. W. Russell*—continued.

5942. He does not "create" it; he only operates upon it?—Or where he operates upon it, if that inherent value is found to give out more than what the tenant has expended, the landlord would be entitled to some proportion of it.

5943. I was only struck with your evidence, that you thought the tenant had the best right to the whole of it?—When I said that I went rather further than I intended. In saying it it was a mistake in my mind, because I think there should be a participation if there is an inherent value lying dormant that the tenant creates, and if it turns out to be more than the outlay of the tenant.

5944. That is simply a matter of the exercise of judicial discretion, as to who ought to get it and in what share he ought to get it?—Yes, I was wrong in saying that it should all go to the tenant; I did not intend to convey that idea.

5945. You said that the landlord had no inducement to improve the land in Ireland; he is a mere rent charger?—Yes, he is only a rent charger.

5946. And therefore a man in that position has not the inducement to spend the money upon the land?—No, not the inducement that he had before.

5947. And therefore the tenants have the inducement to spend the money upon it?—The tenant at present, as the law stands, is the person who expends the money upon it.

5948. That is a question to take into consideration when you are exercising your judicial discretion in deciding upon the value?—Yes.

Colonel *Waring.*

5949. There is one point I should like to clear up: talking about the case of fixing rents by agreement out of Court, do not you think that the avoidance of law costs is a considerable item in the matter?—Yes, it is.

5950. And the avoidance of friction and bad feeling that would arise from swearing against each other in court, do not you think that that operates with landlord and tenant in many cases?—Yes, I think there is a good deal of cost in court in the case of landlord and tenant that might be avoided. In Roscommon we had a great many cases brought into court, without any solicitor at all, by the tenants.

5951. And that would account, possibly, for the rents fixed by agreement in the early days?—Yes; that may be one element that operated.

Mr. CORNELIUS O'KEEFFE, called in; and Examined.

Chairman.

5952. You, I believe, are an Assistant Sub-Commissioner, like Mr. MacAfee?—Yes.

5953. How long have you held that post?—I was appointed in 1881.

5954. Therefore you have been at work administering the Act ever since it was passed?—Yes.

5955. You are one of the original staff?—I am.

5956. Had you any experience as a practical farmer?—Well, I was reared to farming; I studied agriculture; I got a diploma in agriculture, and have been farming all my life.

5957. You have cultivated land yourself?—Yes, I farm 400 acres at present.

Mr. *T. W. Russell.*

5958. Where?—In the County of Cork.

Chairman.

5959. You have been associated with various legal Commissioners, have you not?—I think with eight or nine.

5960. And, of course, with various colleagues as their Assistant Commissioners?—Yes, about 14.

5961. I saw a statement a couple of days ago made by a Committee inquiring into these Acts in Ulster, I think, that the minds of the Sub-Commissioners, at a very early stage in the administration of these Acts, were affected by the report and proceedings of the Committee of the House of Lords which sat in 1882 or 1883; what do you say upon that point?—It did not affect my mind in any way.

5962. I refer to the proceedings of (I think it was) Lord Cairns' Committee. Those proceedings were not considered by the Sub-Commissioners who at that time and subsequently were sitting and fixing fair rents?—We did not consider them. I do not even know what they were.

5963. I will tell you what they were. There was a Committee appointed the year after the Act was passed to investigate the working of the Act and its administration; and the allegation that I have seen is (and there is nothing surprising if it be so), that the appointment of that Committee, and the proceedings of the Committee, affected for that year and for some years afterwards the minds of the Sub-Commissioners, and gave them a bias, gave them a direction. What do you think as to that?—Well, I do not know what it might have done to other Assistant Commissioners, but neither my mind nor my acts were in any way affected by anything that occurred from the day I was appointed to the present, beside doing what I thought my fair duty to landlord and tenant.

5964. Did you never hear that the proceedings of that Committee had had any effect whatever in the administration of that Act?—I heard very little about that.

Chairman—continued.

5965. Did you hear anything about it?—No, nothing that impressed me that I can remember, with regard to its effect upon anyone.

5966. You mean, then, that the sitting of this Committee of the House of Lords was as if it had not taken place?—Yes, so far as I am concerned.

5967. No, no; not so far as you are concerned?—And so far as those associated with me in any way that I knew.

5968. Now, I want to ask you some questions on two or three points on which, I think, you have something to say. First, on the relation that rent bears to the value of the gross produce; how do you estimate that in fixing a fair rent?—That is a thing that would vary very considerably according to circumstances, according to the difficulty of making the rent and the expenses incurred in making the rent.

5969. I suppose it would vary also with the nature of the land?—With the nature of the land, the district, the inconvenience of distance from markets, the cost of production, and so forth.

5970. On the nature of the land; what proportion of gross produce would you set down as a fair rent?—Well, if it were simple grazing involving little or no expense beyond that of a herd, it used to be considered fair to give the landlord half the gross produce.

5971. You mean in the first-class dairy land—half?—No, I did not say "dairy land," I meant where it was simply pasture land suited for good store cattle or fat cattle and sheep.

5972. In grazing land, then, the proportion would be about one in two?—About one in two.

5973. Then in first-class dairy land?—In first-class dairy land giving 2-5ths of the produce to the landlord used to be considered a very fair thing; that is what is regarded in Limerick as a fair disposition of the produce.

5974. And in inferior land?—The next class of dairy land, about one-third; and then I should say one-fourth, more or less according to the amount of tillage which would be necessary, the quality of the land, the district, and so forth, where the farmer would have additional expense in keeping his cattle.

5975. Now, as to the tillage land, what is the proportion?—Well, that is varying. Originally, I think, when I was a boy, they used to consider one-third a fair thing; but, perhaps, 40 years ago the more intelligent farmers considered one-fourth, and I should say it would be less than that now considerably, in fact, it is hard to estimate it now, because tillage does not pay at all; it is not remunerative.

Mr. *Macartney.*

5976. When you speak of more than a fourth, do you mean a fifth, or less?—I meant less than a fourth or even a fifth.

Chairman.

5977. Wheat is, in Ireland I suppose, now practically out of cultivation?—It is nearly quite out of cultivation.

5978. That was not formerly the case, was it?—Wheat culture was a very important part of our business as farmers when I was young; very important indeed.

5979. How much per acre did you set the wheat?—I would not be over estimating it if I said 8*l.* to 10*l.* per acre, gross produce.

5980. Then land that used to have produce to the value of 10*l.* per acre is now much less valuable. Wheat having gone out of cultivation some other system has taken its place?—Yes.

5981. How much per acre do you set the new system at?—For the same class of land perhaps 2*l.* an acre would be a very fair estimate.

Colonel *Waring.*

5982. Gross produce?—Yes.

5983. How much is an acre of oats worth?—I am taking a farm all round in the system that is being practised now.

Chairman.

5984. What you mean, I take it, is this: that land under wheat that used to be worth 8*l.* or 10*l.* an acre, now, under some other crop, is not worth more than 2*l.* an acre?—Under grazing, which is what we are coming to, and even with some tillage mixed with grazings.

5985. That same land, put to some other use, is only worth 2*l.*?—2*l.* As dairy farming, for example, it will take five acres of the same class of land to carry a cow all the year round.

5986. Spade cultivation; what has been, or what is, the effect of that?—Well, spade cultivation was extensively used, and is still in use in congested districts. Spade cultivation is a kind of reclamation, in fact.

5987. But, of course, it has added to the value of the land?—Decidedly it has added to the value of the land.

5988. We have seen one circumstance, the going out of the wheat, which has lowered the value of the land. Now, of course, the spade cultivation has added to the value of the land?—Spade cultivation only applies to very small holdings at present.

5989. I know, but so far as it has come into use it has added to the value of the land?—Oh, yes.

5990. How has it added to the value?—It increases the depth of the soil, and thereby increasing the supply of plant food. Now, for example, the "lazy bed" system, which was universally condemned, did some service in that way.

5991. I do not think you need go into particulars; it has increased the benefit of the soil, therefore the productive service of the soil?—Yes.

5992. Now tell me why, in your opinion, a certain number of cases have not come into court. I am not upon the point of legal exclusions, that is another matter, but external circumstances. What circumstances, in your view, have kept cases out of court?—The fact of tenants getting temporary reductions from the landlord, I should say, would be an important one.

Chairman—continued.

5993. A temporary abatement?—A tenant having got a temporary abatement was less disposed to go in and have a fair rent fixed, no doubt.

5994. What else?—Where a tenant made large improvements, increasing the value of his holding.

5995. Why?—In some cases he might perhaps have doubled the value of his land by his improvements, by bringing in manure from external sources, or bringing in auxiliary food, in fact, by really good agriculture.

5996. You do not quite explain how that makes him indisposed to go and have a fair rent fixed; that is the point, you see?—If these improvements were made over 20 years, if his father had been making them, surely he would not come into court, as he would not only lose them, but the improvement would be thrown into the scale in favour of the landlord when fixing a fair rent.

5997. Is there any other consideration that keeps tenants out, in your experience?—Owing arrears would keep tenants out.

5998. That is to say, you have found in your experience the tenants in arrears have been afraid to have recourse to the Land Courts?—Yes, and also tenants having certain appurtenances which were voluntary on the part of the landlord, would be afraid perhaps that they would not get these if these came into court to fix a fair rent.

5999. In the matter of evidence for improvements, do you agree with those who have told us that the onus of proof ought to be thrown in all cases upon the landlord?—Yes; I am strongly of that opinion.

6000. You are strongly of that opinion?—Yes.

6001. As to sub-lettings, what is your view?—I think, when sub-lettings were made with the knowledge of the landlord or his agents, where he acquiesced in them, or did not prevent them, it would be a very great hardship on the tenant then that he should be prevented from having a fair rent fixed.

6002. Would you go further than that and say, where the sub-letting has not injuriously affected him?—I would.

6003. You would put it in that way?—I would.

Mr. *Sexton.*

6004. Injuriously affected the interest of the landlord, you mean, when you say "him"?—Injuriously affected the interest of the landlord in the holding.

Chairman.

6005. You mean that where the interest of the landlord in the holding is not injuriously affected you would be in favour, in spite of sub-letting, of allowing a tenant to go into court?—Yes, and I think it is a matter that should be left to the discretion of the Assistant Commissioners to determine on their inspection of the holding.

6006. But you would not prevent him going into court simply because he had sub-let?—Certainly not.

6007. Sub-division,

Chairman—continued.

6007 Sub-division, or a division of the holding, when it has taken place with the knowledge and consent of the landlord, would that involve depriving a man of his right of going in and having a fair rent fixed?—No.

6008. Do you think it is a hardship that he should not go?—I think it would be a very great hardship where the landlord is cognisant of this thing being done, and if it does not interfere with his interest in any way.

6009. We have heard a good deal about the length of the statutory term, 15 years; what is your view upon that?—Well, I think where the tenant considers that the rents that are fixed unfair, notwithstanding that he appealed, and that he had recourse to the protection that the law gave him, still if he finds the rent is too much (according to his estimate), 15 years would be too long.

6010. Would you give any other number of years, or suggest any other number?—I rather think it would be a disadvantage to the landlord or to the tenant to be constantly unsettling the thing; I would agree to the term that has been mentioned, seven years; I think that would be fair between landlord and tenant.

6011. Have you any view on the point of the automatic process of readjusting rents?—I think it is perfectly impossible.

6012. You have, I suppose, come across holdings in your experience where the rent was so high as to almost deserve to be called exorbitant?—Yes.

6013. You have?—Oh, yes.

6014. I want to ask you this, whether in your experience holdings subject to these exorbitant rents have not, by the Land Commission, been more highly rented than other holdings where the old rent was not so excessive?—I should not be surprised if that were true.

6015. You would "not be surprised if that were true"; it is a very important fact if it is true, is it not?—Well, I can only speak for myself and for my colleagues. I do not think it is true with regard to the work that we have done.

6016. I thought you said (I do not want to press you), in answer to my question when I first put it to you, that you believed that to some extent that was true?—It would not surprise me, I said; I do not know what others have done, but I do not think it has been done in the Commission I was on.

6017. Have you never, in all your experience, found a case of which that would be a true description?—I don't remember.

6018. That is to say, the judicial rent was fixed higher than it would have been, partly because of the exorbitancy of the old rent, you see the point; in fact, you said you did, because you said it would not surprise you to know it had happened?—You mean that if there was an exorbitant rent that would have the effect of having the judicial rent higher than it otherwise would be if it were only a comparatively normal rent.

6019. Yes, that is quite true; has not the fact of the holding having been subject to an exorbitant rent made the judicial rent higher than on a holding where the rent was not exorbitant?—I have heard that stated over and over, so I believe there may be some truth in it.

6020. You believe there may be some truth in it?—Yes; but it does not apply to the Commissions I have worked on.

6021. But you have heard of it as regards other Commissions?—I have heard of it.

6022. Then we may take it from you that you have heard that in the working of the Land Acts that particular circumstance has happened?—Yes.

Mr. *T. W. Russell.*

6023. Where have you principally worked?—I have worked in the counties of Munster, Leinster, and Connaught, but not in Ulster.

6024. You have not been in Ulster at all?—Not in Ulster.

6025. You have worked from the passing of the Act, I believe?—I have.

6026. Do you think the system which prevailed of fixing rents between 1881 and 1887 was as scientific as it is now?—Well, I think it was a very important thing that the mapping should have been introduced and the classification. I think it is well to have a record; still I do not condemn the work that we did before the mapping; I think we substantially did pretty much the same class of work.

6027. Mr. FitzGerald said that it was loose and rapid, the work done between 1881 and 1887?—Well, I do not know beyond my own experience.

6028. You do not agree with that?—No; I do not think so, as far as I know.

6029. Do you think that the rents fixed then, that is during that first period, are fair rents now?—I do not think so; I think they would be too high now.

6030. Do you think that, owing to the fall of prices, that this is so?—Yes.

6031. Increased cost of labour?—I think that owing to those causes the rents must be lowered.

6032. You think that if these rents came into court they would be lowered?—I think so.

6033. Even without any change in the law, leaving the law as it stands?—Yes, even without any change in the law.

6034. You spoke of sub-letting?—I did.

6035. Have you ruled out many cases because of sub-letting; is it a common thing in the south?—We have not ruled out many.

6036. What is the principal exclusion of parts in the south and the west?—We have had very few cases excluded in the south.

6037. Take a farm where there is provision for labourers, and where the law would not hold the sub-letting to be trivial; is it your opinion that if the landlord has assented (and I draw a considerable difference between "assent" and "consent") to these cottages being there; that is to say, has raised no objection, has taken his rent without protest, the holdings should not be excluded?—It used to be a notorious thing in the district I belong to, when a landlord took active measures to prevent tenants building labourers' cottages,

Mr. *T. W. Russell*—continued.

cottages. In my experience the bulk of the landlords assented to their being built.

6038. You do not appreciate the point I am putting. My point is this: assuming that a farmer goes to get a fair rent fixed; that the landlord objects on the sound ground of sub-letting, and that you are forced, under the law, to rule that the sub-letting is not trivial, and that, therefore, the farmer is excluded under it; do not you think that in all such cases, where the landlord in the past has assented by the taking of rent, by no objection being ever offered, and no protest made, these considerations ought to weigh?—Certainly. The tenant had perfect discretion generally with regard to matters of that kind. He was never interfered with in any way. I never knew but one landlord who objected.

6039. But you know that he is interfered with very frequently now?—He is interfered with now in the fixing of a fair rent.

6040–1. That puts the point of my question: Do you think the fact that the landlord in the past has assented to all this ought to bar his right to object to any tenant coming in and fixing a fair rent?—I think it should.

6042. Have you any experience of mill holdings?—We had some few, not many. We had one in Queen's County where we did not fix the rent in consequence of its being a mill holding. The mill was burnt down, in fact it was rendered useless, and no one would think, under the present condition of milling, of rebuilding the mill.

6043. You tell me that you had a case in Kilkenny of a mill which was burnt down, and which no one would think of re-erecting, and yet you had to exclude that holding because of the burnt and ruined mill; is that so?—Yes, it is.

6044. Have you had much experience as to town parks?—Yes.

6045. Have you excluded many holdings because of town parks?—Well, it is a very vexed question. I do not think anyone can define a "town park."

6046. I entirely agree with you. In saying that you express my view, at all events?—To give you an example of what I mean. We had, very near Ennis, a small case which we considered a typical town park, where a tenant had a grocer's shop in the town, and he had also posting cars; he was apparently a comfortable shopkeeper, and he had a small holding near the town, which he used in connection with his business. Mr. Reeves used then to come out with the Commissioners. He was chairman. We considered it was a typical town park. The Chief Commissioners came down to Ennis afterwards, the late Mr. Vernon, Judge O'Hagan, and Mr. Litton, and the three went out to see this holding, and the next Commission I was on in Ennis was deputed to inspect this holding again, and put a rent upon it as not being a town park.

Mr. *T. W. Russell*—continued.

6047. On that point, the last question I will ask you is this: Do you think any injury would accrue to the landlord of such holdings if the various Commissions were directed to fix fair rents upon these holdings, that is to say, if the town-park theory were abolished altogether, with provisions under which proximity value would be attached to it?—And accommodation.

6048. You think no hardship would arise?—I can see none.

6049. Do not you think there have been cases where a Commission has come across an exorbitant rent, and that a fear of giving a great reduction has operated on the minds of the Commissioners?—I never had that fear.

Mr. *Dillon.*

6050. Did you act in the case of the Bodyke tenants on Colonel Callaghan's estate?—I did.

6051. You acted with Mr. Reeves in that case?—I did.

6052. Do you consider that the rents fixed in that case are fair rents?—I do not think they are.

6053. You do not?—Not now.

6054. Were the rents there very high?—They were very high.

6055. When was it?—I should say it was about 1882 or 1883; perhaps it may have been 1884.

Tuesday, 26th June 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Macartney.
Mr. Dillon.	Mr. M'Cartan.
Mr. Hayes Fisher.	Mr. John Morley.
Mr. Fuller.	Mr. T. W. Russell.
Mr. W. Kenny.	Mr. Sexton.
Mr. Leese.	Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. CORNELIUS O'KEEFFE, again called in; and further Examined.

Mr. *Sexton.*

6056. I GATHER from your evidence on the last day that you have not served in Ulster?—I have not.

6057. And you can give the Committee no information from your own experience concerning the Ulster custom?—None.

6058. I wish to ask you whether you have found proved before you in many cases any usage corresponding to the Ulster custom?—None, that I can call to my mind.

6059. I understand you to say you have served throughout three provinces, Leinster, Munster, and Connaught?—Yes.

6060. For the whole period since you were appointed?—Yes.

6061. During the whole of that time, serving throughout the whole of those provinces, you have found no usage proved before you, corresponding in its nature to the Ulster custom?—None.

6062. I suppose we may take it, therefore, that no such usage exists to any extent?—I think it does not.

6063. Now the Committee are aware that, where no such custom exists, the landlord has the right, when the fair rent is being fixed, to call upon you to fix a specified value for the holding?—Yes.

6064. Has that often happened before you?—Not often, but it has happened.

6065. And you have fixed the value?—Yes. Sometimes we declined to fix the value when there was not evidence of value in the district forthcoming.

6066. Then you hold that, under the law, you are entitled to decline to fix a specified value?—Well, considering that in some districts you have peculiarities as to value, we did not think that we were competent to do it under these circumstances, and except we got some evidence of value from the landlords or tenants or both, we in a few cases declined to fix the specified value, that is, the chairman declined.

6067. I suppose I may infer from that that the evidence you consider sufficient in the fixing of the fair rent is not sufficient in all cases to enable you to fix a specified value?—Yes; the idea prevailed at first that the specified value

Mr. *Sexton*—continued.

was founded on the average of what would be obtained according to the competitive value in the district for the interest of a holding, and then we thought it was necessary to get evidence on that point, which we did in some cases.

6068. You understood the specified value to be, I suppose, a certain number of years' purchase of the difference between the fair rent of the present tenant and the competition rent in the open market?—That was our original idea.

6069. Did you apply any certain number of years' purchase as a rule?—Twenty years' purchase, or less, according to the nature of the holding.

6070. Twenty years' purchase of the difference between the fair rent and the competition rent?—Well, we took what would be regarded as a fair competition value in the district, not an excessive competition value; for example, an auctioneer's evidence on the point we would consider important, but we would not take the extreme competitive value, we would take what would be a normal competitive value.

6071. If you add 20 years' purchase of the value of the tenant's occupation right to the fair rent that you fix, would that give you a reasonable or an unreasonable competition rent?—Twenty years' purchase of the difference between fair rent and moderate competition rent.

6072. Then we come to this, that the specified value is, in your judgment, 20 years' purchase of the occupation right?—I do not say that that is the practice now.

6073. "Now!" has it altered?—Yes, I think so.

6074. In what respect?—The specified value now is something less than that. It would be rather different; it would be what a tenant may fairly be expected to give for the farm, taking into account the profitable management of the farm; that is, that he should not give more than he, as a prudent tenant, might expect to be repaid by the management of the farm afterwards; that is, taking into account that he is a prudent tenant, and that he would not give more than the thing is worth.

6075. I thought you said just now there had

Mr. *Sexton*—continued.

been some change at some time in the mode of fixing the specified value?—I understand there was a change; yes.

6076. I wish to gather from you at what time, and in what mode, that change was brought about?—I think it was brought about through the Appeal Court; I know that we fixed specified values on evidence of that nature that I gave you first; but these specified values have not always stood; I remember particularly one case (I think "M'Gann" was the landlord), in the County of Meath; I think that was reduced on appeal, by the Chief Commissioners.

6077. Is there an appeal in every case?—Oh no, not at all.

6078. Is there an appeal in every case of specified value from you to the Land Commission?—There is the right. I don't know how often it is exercised.

6079. As you are a body of Commissioners acting all over the country, no uniform change in the system of fixing specified value could have been produced except by instructions from the Land Commission?—There were no instructions ever given.

6080. How did the change come about, then?—Simply from the fact, I think, that it was understood by the Assistant Commissioners, that that view was not regarded as a fair method of fixing the value of the tenancy.

6081. Did they arrive at that view after consultation between themselves, or on instructions from the Land Commission?—We had no consultation amongst ourselves, and we got no instruction from the Land Commission.

6082. What I am rather puzzled, then, to discover is, how a number of men separated from each other about the country, could have arrived, as it were by inspiration, at the same conclusion as to specified value?—The Chairman gave the view; there was a judgment by Mr. Trench on that subject, and it was pretty much the same as I described to you. It was a legal definition on which we, as lay Commissioners, acted.

6083. Did you gather at any time, from anything said by any of the Land Commissioners, in a public judgment or otherwise, that the specified value was being fixed too high?—Oh, yes; by being reversed; we understood that as an intimation that we were too high.

6084. Now I see; then it was found, I suppose, in some cases; numerous cases, perhaps?—Not numerous; the number of cases with which we had to do of that kind was very small altogether. There was a notable case, that of M'Gann, landlord.

6085. A notable case?—Yes, it was an important case, a big case.

6086. At any rate, you gathered from the reversal of the judgment of the Sub-Commission in fixing a specified value, that the value fixed was deemed by the Land Commission to be too high?—Yes, that our principle was deemed wrong.

Mr. *W. Kenny.*

6087. Did you give the date of that case?—No, I did not; my memory does not serve me so far. "M'Gann" was the name of the landlord. It was either "M'Cann" or "M'Gann." I think it was "M'Gann."

Mr. *W. Kenny*—continued.

6088. In what county was that?—I think it is the County Meath.

Mr. *Sexton.*

6089. The effect of the change was to reduce the price fixed upon the specified value?—Yes.

Mr. *Macartney.*

6090. Could you tell us the name of the tenant?—No, I do not remember the name of the tenant.

Mr. *Sexton.*

6091. When you fix a specified value the result is reported to the Land Commission, is it not?—Yes; our files or schedules are always, of course, sent to the Land Commission.

6092. And when, in fixing a fair rent, you find that the tenancy has been sold since 1870, you put down upon the pink report the price given for the tenancy?—We do.

6093. On the ordinary pink report?—Yes.

6094. Have you got a copy of it before you?—Yes, I have.

6095. Will you look at the bottom of it and see whether you do not find that you are asked to say whether the tenancy has been sold since 1870, and if so, what price was given for it?—That would be previous to our fixing a judicial rent.

6096. Of course, if it had not been "previous" it could not have been reported?—Where it has been sold, yes.

6097. The point of my question is that the Land Commission are in possession, first, of the particulars of every case in which specified value has been fixed?—Yes.

6098. And, secondly, in every case in which you have found there has been a sale, when fixing a fair rent, what price has been given for any tenancy purchased since 1870?—Yes, that is so if sold or purchased.

6099. So that we could have from the Land Commission, could not we, the prices fixed for specified values, and the prices paid in the open market for tenancies?—Yes, where there was a sale.

6100. Where there was a sale, of course; now, whether the tenant sells his interest in the open market or to the landlord, he sells the same thing, does he not, in every case he sells what he has to sell, legally?—Yes.

6101. What do you say that he has to sell legally?—He has to sell the difference between a fair rent and a competitive rent, as we thought at first; but that does not appear to be the case now. He would sell the interest that there would be between a judicial rent and the purchase, founded on what would be a moderate competition rent; he would sell that and he would also sell his improvements.

6102. Well, I was able to understand very easily what he had to sell when you told me that it was a certain number of years' purchase between the fair rent and the competition rent?—A moderate

Mr. *Sexton*—continued.

A moderate competition rent, not an extreme competition rent.

6103. Twenty years' purchase of the value of his interest between the two?—Yes, but the definition that I gave of "moderate" rather restricts it, because in competition sales, I think, there is more than that value given; more than a moderate value, and much more, very much more, in many cases.

6104. So that the effect of the right of pre-emption is greatly to limit the amount the tenant may receive for the specified value?—Precisely.

6105. We heard of a case in which 155*l.* was offered for a tenancy, which the tenant would have received if he had been under the Ulster custom, having the right to sell; but being under the rule as to specified value he received 105*l.*, that is about two-thirds of what he would have had in the open market?—Yes.

6106. Does your experience lead you to think that that represents anything like the ordinary proportion between what he gets and what he might get?—I would say roughly it would be something like that.

6107. That he forfeits one-third of what he might receive in the open market by reason of being obliged to sell to the landlord?—Yes.

6108. Now do you see any reason in the condition of the non-custom tenant, as compared with the custom tenant in Ireland, why he should be compelled to forfeit one-third of that value?—I think it would be more reasonable that they should be on the same footing; I think if one district in the country has a certain privilege or right, it would be desirable that that should be extended to the other districts.

6109. And you would make the law operate in fact as it does in theory, in the opening words of the Act of 1881, that is, that the tenant should be able to sell his tenancy for the best price he could get?—Yes, I think so.

6110. Now I call your attention to the serious limitation which appears of the scope of the operation of the Act of 1881. We gather from the evidence that only about one-third of the agricultural holdings have had fair rents fixed upon them by the Courts?—Yes, so I understand.

6111. And that another set is not entered at all in your records?—Yes.

6112. Then there is a figure about 120,000 in which the rents were fixed by agreement outside the court?—Yes.

6113. These three figures, 180,000 fixed in court, 180,000 left out of court, and 120,000 fixed by agreement, make up the total?—Yes.

6114. Now, with regard to the 120,000 rents fixed out of court, have you studied that remarkable paper of Mr. Bailey?—I have not seen it.

6115. I think you are aware of its import; the last paper handed in?—Yes.

6116. It shows that in the case of about 50 tenants in Down, Armagh, Monaghan, and Cavan, whose rents were fixed by agreement in the years from 1882 to 1887, but for some reason or another were not filed, and therefore were inoperative, these same cases came into court in 1893 and 1894, the original rents having already been reduced about 20 per cent., and

Mr. *Sexton*—continued.

were still further reduced by more than 20 per cent.; now what observation does that lead you to make from your experience upon the cases generally of tenants who may have agreed in those years with their landlords, and whose agreements were filed; would you say that the reductions were likely to have been much lighter in those cases than in the cases of tenants who came into court in those years?—I do not know about that, but I know that we had similar experience with regard to these cases, and that we also reduced them considerably.

6117. That is precisely what I wanted to know; have you had many such cases?—Oh, yes, a considerable number.

6118. Can you give any estimate of their number?—No; they were very numerous.

6119. Did your experience bear out this record?—Quite so.

6120. That the reduction made after the agreement came into court was as large, or about as large, as what had been already given?—Very often. Of course it varied; I could not very well give you averages.

6121. No, I quite recognise that. Let me ask you this: How did it usually happen that these agreements were not filed?—Well, it appeared to be due to some remissness on the part of the landlord or of the agent; it was no fault of the tenants.

6122. Inadvertence on the part of the landlord?—Yes, apparently. I do not know why they were not filed.

6123. It would appear, then, that it was by mere accident that the tenant was so fortunate as to get into court at all?—Yes; if they had been filed, of course he could not get in until the termination of the period.

6124. Of the statutory term?—Yes.

6125. He owed it, then, to a fortunate accident that the reduction which he would have had to put up with if the agreement had been filed was doubled, or about doubled, when he came before the Court, in many cases; the reduction given upon the agreement was half, or less than half, upon the average than the total reduction after the man came into court; was your experience anything like that?—I should say it would be something about that; I think that would not be an unreasonable proportion in many cases.

6126. If that state of facts is any index to the condition of these 120,000 tenants who have had rents fixed by agreement out of court, is it not a very grave thing that those tenants must go on, until the end of this century or so, paying rents so much higher than those they could fairly afford to pay?—Yes; I think it is.

6127. Is it not a matter of the greatest urgency that these men should be allowed by the retrospective operation of the shortened statutory term to come into court at once and have their rents revised as the others have by accident?—I should think so.

6128. Can you tell me why it is that we do not find in the Report of the Land Commission any separate account of the reduction given in those cases where the agreement rent was fixed out of court; you report them, do not you, to the Land Commission when an agreement comes

Mr. *Sexton*—continued.

before you between landlord and tenant; does it not come before you?—Well, it does come as a matter of evidence, and is reported in the pink sheet.

Colonel *Waring.*

6129. How could it come before you as a matter of evidence?—If it is fixed and determined between a landlord and tenant we have the original rents and the reduced rents.

6130. How does it come before you at all?—In evidence; in hearing the case.

6131. Oh, yes, clearly; I thought you meant rents that did not come before you?—Oh, no; I have no evidence of that; I do not know anything about that.

Mr. *Sexton.*

6132. I was under the impression that the agreement made out of court may have passed through your sub-court to the Land Commission?—Oh, no.

6133. It goes direct?—Yes.

6134. Where are they filed, in your court or in the Dublin court?—In the Dublin Court.

6135. I am speaking of the case where there is no evidence, where the landlord and tenant agree out of court and merely file the agreement?—If there is a private arrangement between landlord and tenant to fix a fair rent they have that registered in the Land Commission Court.

6136 In that case the Land Commission would have the same facility for knowing what the nature of the reduction was in agreements out of court as in cases which were heard in court, would they not?—They would.

6137. In cases of agreement between landlord and tenant out of court, which have come before you, have you any case in which the old rent and the new rent are specified on the face of the agreement?—Oh yes, there are such cases.

Colonel *Waring.*

6138. Those cases come before you only for revision?—No, they do not come for revision; but in cases where the rent is agreed upon between landlord and tenant they come before us to record that, that is where settlements are made after the notice to fix a fair rent is served, and before the hearing of the case.

6139. For what purpose?—A record is taken of it.

6140. In the Sub-Commission Court?—In the Sub-Commission Court.

Mr. *W. Kenny.*

6141. May I ask is any record of it made by the Court merely acting ministerially without acting judicially?—We do not act judicially; we merely record the fact. There are cases listed for hearing and the settlements take place before they are heard.

Mr. *Sexton.*

6142. Now about the one-third of the total number of agricultural holdings, the tenants of which have not come in at all; we are here, 13 years after the passing of the Land Act, confronted with the fact that only one-third have had the rent fixed in the courts, and another third still remain out; you have already told us some of the reasons why you think they have remained out; one is because they have received temporary abatements; now in order to keep the tenant out of court it would be requisite that the temporary abatement should be from year to year, would it not?—In order to keep him out of court?

6143. Yes, in order to induce him to remain out of court?—Yes; when these abatements were stopped a good many of them did come in.

6144. So that in the case of anyone kept out so far as abatements are concerned, the abatements would have to be from year to year?—Yes.

6145. Now if the landlord for a number of years had given an abatement from year to year would not that fact be a great inducement to the tenant to come in, in order to have the security of the statutory term, I mean if he had such evidence afforded to him of the excessiveness of the rent?—I do not know that we would attach much value to that evidence. The landlord and tenant both may have a desire to come to an amicable arrangement without the interference of the Court; the tenant particularly, I think, would have a desire to settle with the landlord, and if he could he would prefer it to coming into court. I do not say that it would often occur, but it might happen that a tenant would incur the displeasure of the landlord by coming into court.

6146. Where an amicable disposition prevailed between landlord and tenant so far as to produce an abatement from year to year, would not it be apt to take the form of an agreement filed?—Not necessarily.

6147. Usually?—I cannot say.

6148. You think the landlord and tenant would be satisfied to go on with casual abatements from year to year which might cease at any time?—Well, they have done so.

6149. The option being open to the tenant of going into court or of pressing for an agreement, do you think he would really be content in many cases to go on for any length of time depending upon casual abatements from year to year?—He can when dissatisfied with it come into court, but perhaps for some reason or another he may think it just as well to remain out of court in some circumstances.

6150. You would not say that that represents the great bulk of the cases?—I think a good many have come into court when the landlord refused to give these abatements.

6151. I want to fix your attention to the fact that I am speaking of those who still remain out, not those who have at any time come in?—Of course there may be other considerations as well.

6152. What I want to get from you is whether you think that the receipt of casual abatements, not proceeding to the point of agreement filed, does account for a very large proportion of those who are outside?—It would account for a large proportion.

6153. What

Mr. *Sexton*—continued.

6153. What proportion would you say?—I could not answer that question, I have no idea.

6154. Would its operation be as wide, for instance, as that of the question of arrears, or of valuable improvements on the holding?—It may or may not be; I could not answer that.

6155. You have no definite opinion upon the subject?—No.

6156. You gave some very important and very striking evidence about the effect of the making of improvements by the tenant inducing him to keep out of court?—Yes.

6157. I gather from you that where a tenant has made valuable improvements within the last 20 years that might keep him out?—Yes; and outside 20 years.

6158. At any time, then, I will say?—At any time.

6159. You say that he prefers rather to bear the rent he has than come into court and incur the danger of having the rent fixed on his improvements;—Yes, I think that would apply.

6160. I think you said that in many cases the improvements had double the value of the holding;—Yes; and I think that is a very important question, because I think the future of the agriculture of the country depends upon it. If we are to hold our own at all it is only by making improvements in the manurial sense, improving the condition of the ground altogether, that we can succeed; and I think it would be desirable that such improvements should be secured to the tenant.

6161. I am afraid, when you mention that question of manure, you know that this whole question of improvement is governed by the language of the definition of the word "improvement" in the Act of 1870; and we are told that an improvement is not really the improvement, but is the work which caused the improvement; that is the lawyer's way of putting it. The improvement is not the improvement, but the work that caused the improvement. Do you call to mind that in the Act of 1870, in the definition, there is a second paragraph which says that "Tillages, manures, or other like farming works, the benefit of which is unexhausted" when the tenant quits his holding, are also to be treated as improvements. How do you apply that to the whole theory of this very much tangled law?—We are rather circumscribed in our action; we can only take into account what is proved in the court, so that if the tenants' improvements were more than 20 years old, the very fact of no application being made would leave the tenant at a loss for such improvements. These demands are rarely made except in a very casual way.

6162. The lawyers tell us that an "improvement" is a "work," and nothing but a work; manure is an improvement; does the increased letting value of the holding from manure arise from work, or from the value of the manure that is applied to the holding?—The value of the manure; the work is something, but not a great deal; that depends on how you apply it. Manure might be applied in different ways; you might, for example, bring lime into a district which contains no lime, ten or twenty miles, but there

Mr. *Sexton*—continued.

would be a great deal of work involved, in addition to the cost of the lime. Then in another case, where you bring in feeding materials, auxiliary food, into a holding, you have there indirectly a great deal of manure applied without much work, but at a great deal of cost.

6163. Taking a valuable manure, it is not the work of spreading or applying the manure, but the cost of the manure itself, is it not?—It is the cost, that is the thing. Now there are so-called artificial manures, for example; it is their cost, and they are a very large item in modern farming; a great deal is expended on artificial manures.

6164. What becomes then of the legal theory that an "improvement" is the work, and nothing but the work; suppose you inspect a holding, and find that it has been substantially improved in value for a series of years by the application of costly manures, what allowance do you make the tenant; do you regard it, notwithstanding the language of the Act, as an improvement?—We would regard it as an improvement; but it is a very difficult question to handle in a satisfactory manner, because, from want of local knowledge, you do not very well know the condition of the holding previously, and it is rather a difficult thing for a Commissioner.

6165. I am not inquiring about the difficulty, I am inquiring about what you do when you see an improvement made from the application of the tenant in the preceding years?—In order to estimate its value you must take into account what would be the normal condition of that land before the improvement was made?

6166. Of course, that would be true in every improvement; you are speaking of the "A B C" of the case?—Yes.

6167. But if you find he has made an improvement by that means, would you give him the same allowance, in respect to the cost of it, as of any other?—I think it is very desirable that he should get more, but I think as a rule he does not really get even the cost of such improvements.

6168. You have just now said that improvements are of vital value to Ireland?—I do think so.

6169. Ireland will always have to depend upon agriculture, will it not?—Yes.

6170. And its success will depend on the amount and value of the improvements made in the soil?—Decidedly.

6171. Who has made them up to the present time?—Oh, as a rule, the tenant, with scarcely an exception.

6172. Scarcely an exception?—Yes.

6173. If, therefore, Ireland is to maintain her place as an agriculture country, they must be made by the tenant?—Yes.

6174. And they will not be made, at all events, I assume that it is not likely that they will be made by the landlord?—It is not.

6175. I want to ask you whether you consider from your experience that it would be an improvement in the law, having regard to the fact that improvements are necessary to Ireland, and that they are always made by the tenant, that a more liberal provision should be made in regard to the letting value resulting from the improvements?—I am strongly of the opinion that that should be done.

6176. What

Mr. *Sexton*—continued.

6176. What do you suggest?—Well, I think the 20 years' limit should certainly be done away with, and that there should be no objection to such improvements being regarded as the tenant's where they are due to his capital and skill.

6177. May I ask you, first of all, would you think it well that such a hardship as the loss of his improvements by the tenant, by reason of the omission of any of them on the originating notice, should be done away with?—Yes.

6178. Then if you find upon a farm an improvement made by the tenant which makes at present an addition to the letting value, would you think that that should be taken into account; any improvement that now exists that adds to the letting value?—Yes, I think so; I think it is very important, for the profits of farming are not large, and I think every encouragement should be given to the tenant in order to stimulate such improvements, and to secure to the landlord, if it were nothing else, his rent.

6179. In regard to presumption, the law is that there is no presumption in favour of the tenant in regard to any improvement made before 1850, except buildings and permanent reclamation?—Yes.

6180. Then there is another rule between 1850 and 1870, and another rule between 1870 and the present time?—When the landlord makes an improvement?

6181. When the landlord makes an improvement, has he, as a rule, any difficulty in proving it?—As a rule, he has not.

6182. When the tenant makes an improvement, as he usually does, has he very often a difficulty in proving it?—Always; the tenant never can do so.

Mr. *Macartney.*

6183. Do you say the "tenant never can"?—Not in any very accurate way. Now, for example, suppose I have a lot of men employed in harvesting, and the day turns out wet; well, I will not keep all these men idle, but I will take them to a piece of ground where there is something wanted to be done; that would give them employment for the day, or it may be for an hour or two hours. I never could keep an account of what I did in that way. Then I am obliged to keep a certain number of hands when labour is getting scarce, in order that at any time in the year I may not be short of hands; for example, in harvest or hay time, but in the intermediate time I would employ these men in any work that I thought might pay.

Mr. *Leese.*

6184. You mean some improvement?—Some improvement; well, no farmer ever keeps an account of the time he has these men at work, here and there, in doing that which he regards as making improvements; he never could do it. The landlord, on the other hand, if there is a work to be done (say, draining) might give 5*d.* or 6*d.* a perch, or he might do the whole of the draining; but he usually has an account of that; it is a simple thing to do; but a tenant never can keep such an account, it is too complex.

Mr. *Sexton.*

6185. It comes to this, as I understand, that where the tenant makes an improvement he has no documentary evidence?—No, not as a rule.

6186. The landlord usually has?—Yes.

6187. The present rule, so far as it takes away the presumption from the tenant, leads to the loss of his property in many cases?—Yes.

6188. If the presumption were always in his favour the landlord could always protect himself where he had made improvements; if the presumption were in favour of the tenant, the landlord, if he had made the improvement, would be better able than the tenant is now to protect his own interest, would he not?—Yes.

6189. I think you have said the rents (and we have seen in Mr. Bailey's paper) fixed in the early years were much higher than they would be if they were fixed at the present time?—They would be higher.

6190. And you have told us that in your time, at least the time that you remember, the value of produce has gone down, the cost of labour has gone up, the cost of tenants' living has gone up?—Yes, and labourers' living, which of course of itself would cause a rise in the price of labour; the labourer does not live as he lived before.

6191. It follows, I think, that the difference of 25 or 30 per cent., such as separates the rents of those earlier years, 1872, 1873, and 1874, from the rents fixed now, presses very hard upon the margin of subsistence left to the tenant, looking to the facts you have stated?—Yes, if there was such a difference.

6191*. I am speaking of the rents fixed by agreement?—Oh, yes.

6192. Do you often find that there are heavy arrears?—Well, we do not get evidence on that question of arrears, we hear it now and again, but we do not, as a rule, learn that.

6193. If you found the rent to be very high, or double what it ought to be; you often find that, do not you?—Yes.

6194. Where you find that the tenant is prevented coming into court by fear of losing some right of turbary, grazing, commonage, or seaweed, would you think it expedient that the Sub-Commission Court should have power wherever a right of that kind existed on the estate, whether or not it existed on the holding, to regard that right as appurtenant to the holding and to secure it as an element of the rent?—Yes, there are cases where turbary is being exhausted, and of course in these cases it could not be secured to the tenant.

6195. Of course. A right which does not exist could not be secured, but where the means existed you would secure it as an element on the rent?—Yes.

6196. Now as to the fear of appeals, we know that appeals have been very numerous and have cost a great deal of money. Do you think it expedient that the plan which has been outlined by previous witnesses, should be adopted?—There is a kind of appeal in that which I think would be sufficient. I do not know that it would be desirable to do away with the right of appeal, because there may be injustice to either landlord or tenant, that is, that the Commission or the individuals fixing the rent may not fix such a rent as would be fair to either landlord or tenant,

in

Mr. *Sexton*—continued.

in which case I think there should be some appeal.

6197. Let us take it now a little in detail; the proposal is that one or two Sub-Commissioners, not the same who sit afterwards in the Sub-Commission Court, should, with the consent of the landlord and tenant, the landlord agreeing that the tenant was entitled to have a fair rent fixed and accepting his schedule of improvements, fix the rent, and if that rent were accepted by the parties, or not rejected by either of them within a limited time, it should become the rent for the statutory term?—Yes.

6198. Then if either of them objects to that they may go, in the present form, before the sub-court, the holding having been inspected by two fresh Sub-Commissioners, and the decision of the Sub-Commission Court be final?—Yes, having heard the case.

6199. Having heard the case as you do at present?—I think that would be very good.

6200. Do you think that would be sufficient on the question of value?—I do.

6201. Then you would allow an appeal, as at present, on questions of law?—Yes.

6202. I should like to ask you whether any change has been made in the system of valuing farms in Ireland, by the passing of the Act of 1881?—I do not quite understand what you mean by the "system of valuing."

6203. I understand you fix the value of lands taking into consideration their situation, roads, and so on, and then put an acreable rent on; that is, the gross rent?—Yes. There is a little difference from what would be regarded in my district prior to that time; practically, it might be pretty much the same; the system was different; that is, you valued the holding as a going concern; the farm equipped with buildings. I would, in addition, add that I would assume that a holding would be supplied with road accommodation, water, &c., and, if not, would deduct from the value fixed in the first instance.

6204. You would have done that before the Act of 1881 was passed?—Yes, certainly.

6205. Did you value any land before the Act of 1881 was passed?—Well, I valued land that I was about to take for myself, and I was asked to value land repeatedly, but I declined, I did not go into that; I was too much occupied.

6206. In valuing a farm now do you proceed as you would have proceeded before the Act of 1881 was passed?—No, it would come to pretty much the same thing, perhaps, but I think the rational way would be the way I described prior to the Act of 1881; we would value the complete thing in the same way as if it were a house, and if the roof was off the house, and you were about to take it; you would value the house as if it were complete, and then estimate what it would cost to put the roof on; take that from the whole thing and that would give the value of the house.

6207. Leave out of view for a moment all questions of improvement?—Yes, I am leaving these out.

6208. Suppose there are no improvements?—I am leaving them out of view.

6209. Do you value a farm, the rent to be paid by the present tenant, as if you were valuing it for a new comer who wanted to come in as a

Mr. *Sexton*—continued.

tenant?—Well, that is my principle. I value a farm as if it were a thing that a farmer with capital and skill wanted, in order that he might have a proper return for his capital and his skill.

6210. As if he were coming in?—As if he were coming in.

6211. What do you take off that in order to make the fair rent to the present tenant?—I would only take off the improvements.

6212. So that where there are no improvements the rent paid by the present tenant as valued by you is the same rent that would be paid by a new comer into the farm?—If I were going to take land myself for my own purposes that is what I would do, that is, if I was not driven from any special circumstance to pay more than the value.

6213. Under those circumstances what becomes of the value of his occupation right, his right to remain in possession as long as he pays his rent, is it at all calculated upon the rent?—No, I do not think it is, I do not calculate it upon the rent.

6214. Then when you are directed by the Act of 1881, as you are in Section 8, in fixing a fair rent, that you are bound to have regard to the interest of the tenant (in Sub-section 1 of Section 8), do you think that that adds nothing to the direction you have received in Sub-section 9, that you are not to put rent upon his improvements; do you think the two are the same; I mean when you have saved him from rent on the cost of his improvements do you think nothing remains, that there is no further interest of his to be considered in fixing a fair rent?—I tell you what the practice is in my mind in working the Act.

6215. As to practice, you know the Court of Appeal has declared that the question of value is entirely in the discretion of the Commission; the question of value?—Yes.

6216. Has the Commission ever stated this to the Sub-Commission courts in any code of rules for the guidance of the Sub-Commissioners?—No, we have no instructions; it is left to every individual member of the Sub-Commission to use his discretion.

6217. Every member acts upon his discretion?—Yes.

6218. Absolutely upon his discretion?—Absolutely upon his discretion.

6219. Is dissent frequent between the two lay Commissioners who value holdings?—I do not think it is very frequent. I have had some dissents; and differences in value also, which I have settled.

6220. Very material dissent?—I say not very many dissents.

6221. I am not on the number now, I am on the materiality of the dissent in any particular case?—Well, they would be material, but they were not many.

6222. But you have known very material dissents as to the amount of value concerned?—Yes, they would be material.

6223. How is that usually settled?—It would depend on the discretion of the legal Assistant Commissioner; he, from whatever views he may have entertained in a case, from the hearing or from inspection, may take a different view;

Mr. *Sexton*—continued.

perhaps, in some cases, he may agree with one and in some cases he may agree with another.

6224. In some cases he may take up a position midway between the two?—Yes; in the great bulk of cases he would divide equally between the two.

6225. Do not you think it a rather free-and-easy way of settling the rents of a country to leave a large body of Sub-Commissioners of various views and predilections to settle them without any code of rules or instructions?—Well, I think the discretion of a competent man is not a bad rule for his guidance.

6226. Yes, if all men were perfectly competent and quite unprejudiced it would be, perhaps, a good rule; but, looking at men as they are, do you think it is the best rule; for instance, now you are left entirely to understand what Parliament means when it tells you to have regard to the interest of the tenant, which is, after all, the plenary question of rent, would you think it well that either Parliament or the Land Commission should frame rules informing you what is understood by the "interest of the tenant" and its bearing upon the rent?—I think so.

Mr. *T. W. Russell.*

6227. Where the Sub Commissioners differ as regards the valuation, you say the legal Sub-Commissioner is brought in; of course he has not seen the land at all?—Sometimes he has; in the early days of the Commission he very commonly went with the lay Commissioners on the ground, not recently.

6228. Not recently?—It very rarely happens now.

Mr. *Sexton.*

6229. There is something worse behind, because you appeal from three men, two of whom are agricultural experts and have seen the land, to three men, none of whom are agricultural experts, and none of whom have seen the land; is not that so?—That is so; of course they have the assistance of other men; and get their views.

6230. You have already stated, I think, as to the legal exceptions, that you would be in favour of allowing a fair rent to be fixed in case of sub-letting or sub-division, unless the sub-letting or sub division has injuriously affected the interest of the landlord?—Yes, that is my view.

6231. And would you leave it to the Sub-Commissioners to say whether it had or not?—Yes.

6232. As to town parks, I understand from your reply to Mr. Russell that you see no difficulty about it; that just as the fixing of a fair rent would be easy for agricultural land, having regard to all the complicated conditions, you could just as easily fix the accommodation rent of a town park near a town, having regard, if you like, to the needs of the inhabitants of the town?—Yes.

6233. Do you think it ought to be done?—I think it would be very desirable, because town parks are a rather vexed question; there are so many differences of opinion as to what is and what is not a town park.

6234. Does not it give rise to much friction and discontent in the case of holdings not very dissimilar in nature, non-agricultural holdings, demesnes and pastures?—Yes, that is so.

Mr. *Sexton*—continued.

6235. Would you in the case of what is called a non-agricultural holding allow the Sub-Commissioners to deal with it under the fair rent provisions where it is substantially agricultural, even though minor foreign elements may be contained in the holding, such as a mill or demesne land?—If it was mainly agricultural, certainly.

6236. At any rate I think you would have no objection that in such a case they might have the power to separate the agricultural part of it from the rest?—Yes.

6237. And on that point, as we have had some very rigid rules of law laid down, as to the impossibility of separating one part of a holding from another legally, the necessity of maintaining the legal unit, would you, in any case where the interest of substantial equity was affected by the presence of a foreign element in the holding, think it right that you should have the power to separate the foreign element and deal with the agricultural part?—Yes; for example, there is no reason why you should not estimate the value of the residence as well as the agricultural value of the holding.

6238. Now with regard to demesne land: do you think it reasonable that whilst, upon the one hand, it is held by the law that a tenant from year to year who takes agricultural land can turn it into demesne land by his use of it, on the other hand, a man who is under a fee-farm grant for ever, and acquires a piece of land which is called demesne land at the time he takes it, that land should for ever remain demesne land, apart from any intention of the landlord to resume possession of it?—The landlord could not resume in any case where it is a fee-farm grant.

6239. Quite so?—Then I do not see why it should be considered demesne land.

6240. Where land has been used (whether called demesne land or not), or a considerable portion of it, for agricultural or pastoral purposes, and where there is nothing to indicate any intention on the part of the landlord to resume it at any time, would you treat that as you would treat any other pastoral or agricultural land in the country?—I think, where there is an absence of proof of the intention of the landlord to resume, it would be desirable to treat it as an ordinary agricultural holding.

6241. Is not pasture as important a portion of agriculture in some parts of Ireland as tillage in others?—I think the management of pasture is very important for the future of Ireland. I think pasture ought not to be left to chance any more than tillage produce. I think pasture might be very much improved, and that agriculture in Ireland will run very much in that direction probably.

6242. What do you say from the point of view of the limitation placed upon the fixing of a fair rent on holdings used, as lawyers say, "wholly or mainly for the purposes of pasture"?—As a matter of fact, those who were farming by tillage are running a great deal into pasture, and, inasmuch as there may be coming a time (I think it

Mr. *Sexton*—continued.

it is coming very fast), when they will do as much pasture as the others, I think it very unfair for the one class to be deprived of the benefit of the Act, while it is given to the other.

6243. You think it unfair that Ulster, consisting largely of tillage farms, should have fair rents fixed, and that Munster, consisting largely of pasture farms, should be without fair rents?—Yes, I do.

6244. And you would be in favour of at least so far extending the right and doing away with the limitation as to pasture as to bring in every one who is really in the position of a tenant living by his industry?—Yes; he is living by farming, and if he is crushed by circumstances (and he represents a very large class), I think it would be a serious blot.

6245. You think the system of fair rents should be made, so far as possible, universal?—I do.

6246. And would you, having fixed a statutory term, protect the continuance of that statutory term and its perpetuity against every incident or chance except the act or fault of the tenant himself, would you allow that statutory term to be broken in upon and destroyed by some legal incident outside the control of the tenant, as for instance, the death of a limited owner, the ejection of a middleman, and so forth?—Yes, I would protect the statutory term.

Mr. *M'Cartan.*

6247. Do I understand you to say that you received no instructions from the Land Commission to guide you in the course you should adopt in fixing fair rents in the early years. When you first started your work as a Commissioner, had you then received any instructions from the Land Commission as to what course you should adopt when fixing fair rents?—None whatever.

6248. Have you received any since then?—No, but I applied myself individually to the Chief Commissioners, the late Judge O'Hagan, and Mr. Litton.

6249. What did you apply for?—I said that I thought that continuing on the principles that I had in my head in fixing fair rents, the rents fixed then would be unfair, that they would be too high; but I said that if we adopted the universal principle of adhering to what we were doing, something could be done, perhaps, by which a fair rent could be arrived at from the rents we were fixing, if we had a more uniformly just system than the Poor Law Valuation was found to be. I asked whether some process could not be devised, by which a fair rent might be arrived at from that under a change of circumstances, not that I thought it could, on the contrary, I did not think it could, but I put it in that way, and I asked whether we were to take the change of circumstances into account, and alter our system, and the reply I got was that we were to use our own discretion.

6250. Do I understand that you suggested to Judge O'Hagan that the principles which then

Mr. *M'Cartan*—continued.

governed you in fixing a fair rent operated against the tenant?—Yes.

6251. And made you fix an unfair rent?—Yes.

Mr. *Macartney.*

6252. At what date was this, was it at the commencement of the Land Act?—I think we had been working probably five or six years.

6253. Probably five or six years?—Yes. I was up in Longford at that time, when I made the suggestion; I think it was five or six years after we commenced.

Mr. *M'Cartan.*

6254. As I understand it, the rents you fixed for the first five or six years, were not rents that were even then fair rents according to the principle?—No. If we bear in mind in fixing rents what was our past experience; only of course we deliberately shut out anything with regard to the future, no matter what our views might be.

6255. Are you aware that the Bessborough Commission, in its report, laid down certain principles which should guide valuers in fixing a fair rent; did you take into consideration the produce which the land would give, the working expenses, the credit to the tenant for his improvements, and also for his right of occupancy and any other rights that he had; do you think if these principles governed you in Ireland, there would be much left for the landlord?—I cannot answer that question.

6256. Do you think there would be anything left for the landlord, just answer me generally, without any particular illustration, we would get on better if you would do that?—In many cases there would not be much left no doubt.

6257. Do you believe at present, if you estimated the gross profits, and the working expenses, and gave the credit to the tenant for his improvements and for his right of occupancy, there would be anything left for the landlord in Ireland?—In many cases the tenants are not making the interest on their capital.

6258. Some questions were put to you as to these agreements that were not filed; are you aware that the first time that the tenants in Ireland generally found out that those agreements were not filed, was, when they applied to the landlord for the rebate or reduction under the re-adjustment provision of the Act of 1887, the temporary re-adjustment?—I do not know, I could not say.

6259. You have had no experience of that?—No.

6260. I understood you to say that those agreements never came before you in court; of course they did not?—No, they did not.

6261. Does it not often happen that after originating notices are served, and cases appear in your list, and the parties are called upon to give evidence, you find out the landlord and tenant have agreed, and you merely enter the amount of rent that they have agreed upon?—Yes, quite so, that is what I was referring to in my answer to Mr. Sexton.

6262. Of

Mr. *M'Cartan*—continued.

6262. Of course in these cases the Sub-Commissioners have no knowledge whatever of whether it is a fair rent or not?—None.

6263. Or of what induced the tenant to agree to it?—None, whatever.

6264. It may be agreed upon owing to precisely the same influences as induced these agreements which did not come before the court at all?—We have no knowledge as to that.

6265. No knowledge whatever; I see that you yourself were one of the Commissioners who fixed rent on the Bodyke Estate, Colonel Callaghan's Estate?—Yes, I was.

6266. And you acted with Mr. Reeves?—Yes.

6267. He was the Legal Commissioner?—Yes.

6268. At that time I believe the Legal Commissioner was in the habit of inspecting farms with you?—Very much.

6269. In reply to Mr. Dillon you said you did not think the rents that were then fixed were fair rents?—That would apply generally to the rents fixed at that period.

6270. Just let us confine ourselves to that particular estate; were the rents very high coming into Court?—They were very high.

Mr. *T. W. Russell.*

6271. When were they fixed?—About 1883, I should say—I am not quite certain (about that time).

Mr. *M'Cartan.*

6272. Have you any notion of what was the percentage of reduction?—That would vary. I never could tell what percentage of reduction I made; I always varied my percentage according to the circumstances of the case.

6273. Have you any notion what sort of percentage you would still require, to reduce them to something like fair rents?—Neither could I answer that in a general way, of course each case would require its special consideration.

6274. Do you agree that they are considerably in excess of what fair rents would be now?—Oh yes, certainly.

Mr. *T. W. Russell.*

6275. Did you consider them fair rents when you fixed them?—Yes, having regard to what we then thought a fair rent, you know, of course, the circumstances were very different then.

Mr. *M'Cartan.*

6276. I believe they would come within the observation you made that they were fixed on wrong principles for the first five or six years?—Yes.

6277. At all events I think you said here at the beginning of my examination, that you suggested to Judge O'Hagan, that the principle was not a right principle on which you were their fixing rents?—Yes, the basis from former experience. I said that.

6278. Now will you tell us exactly what that basis was?—The basis would be on the prices, of course, that were received for farm produce and cost of production.

6279. Was it then entirely on the prices that it depended, and the quality of the land, of course?—And quality of the land; but that would apply in any case, you know, it would be prices, mainly.

Mr. *M'Cartan*—continued.

6280. What change has taken place since then in fixing fair rents?—Farm produce has lowered in price.

6281. That is a question of prices?—Yes.

6282. What change has taken place in your mode of fixing fair rents?—I think the mode is pretty much the same; I think the change would be altogether due to difference in prices, or nearly so.

6283. Not the difference in principles?—No, I do not think so; I think the principles would be pretty much the same. We would estimate the value of the different classes of land. I may tell you that in going through ground then, as well as now, we would note the prices of the different qualities of ground, and sometimes we went to the trouble of pacing where we found that there was a very marked difference, and that if we did not estimate the quantity carefully, we would make a very serious error. We went to the trouble of pacing, then to estimate what the rent of that ground would be; so that it is pretty much in effect the same as estimating the quantity from the map.

6284. As a matter of fact, during the first few years after the passing of the 1881 Land Act, were you not in the habit of going over the land, when there was so many cases to be heard, much more hurriedly than you do now, when there was a great crush of cases?—I never went over a farm so hurriedly as that I was not satisfied that I was doing substantial justice.

6285. That is not an answer to my question; I want to know, did you not then go over the land more hurriedly than now?—We may have.

6286. Because there was such a number of cases?—Because there was such a number of cases; and I think it was once suggested that other Commissions did more work.

6287. It was said that other Commissions did more work than you did, and you hurried up to get rid of the cases?—Of course the effect of that would be to cause a little hurry, but not to such an extent as would have any effect on the character of our work.

6288. But at all events, at the beginning, I understand, the complaint was that other Commissions were going through more work than yours?—I think there was something of that kind. I forget whether it came directly to us, or through our chairman; there was something of the kind.

6289. That made you expedite matters; I see in your evidence you are clearly of opinion that mill holdings should be entitled to have a fair rent fixed; tenants of mill holdings; and you give one very remarkable case where there was a mill, and at the time you came there the mill was burnt down, and there was no mill at all?—Except the walls.

6290. And notwithstanding that, you were obliged to exclude that holding, and refuse to fix a fair rent upon it?—Yes.

6291. Do not you think the case of mill holdings and all those other cases where there are sub-lettings, should be admitted to the benefits of the fair rent provisions of the Act?—I think they ought.

6292. As

Mr. *M'Cartan*—continued.

6292. As to town parks, do you see any hardship that would accrue to the landlord if this artificial boundary was entirely removed, so long as he got the rent he was entitled to get?—I do not think it is any hardship to the landlord, I think it is rather an advantage to him on the whole, to have a fair rent fixed.

6293. Do you think also it would be calculated to satisfy the people there very considerably if this power of eviction, which the landlord now has in cases of town parks, was removed from him, and not have the tenant remaining there at the will of the landlord?—I would put him in the position of an ordinary tenant under the Land Act.

6294. At the present time his tenure is nothing but depending on the will of the landlord, because he is subject to notice to quit and eviction?—Yes.

6295. Then I understand that your opinion generally is that all the rents fixed in the first six years after the passing of the Act are now too high, and that an opportunity should be given to have them revised?—I think so.

6296. As to the process of revising them you have already said that on matters of fact, and that of value, the Sub-Commission should be final?—That is my opinion.

6297. And it would save a great deal of expense both to the tenant and landlord if that were final?—It would save expense, and the right of appeal is sufficient, I think, in the way that has been pointed out.

6298. And would draw to a close very much sooner the settling period pending the appeal to the Chief Commission?—Yes.

Mr. *Fuller.*

6299. You said just now that very often the capital of the tenant gets no interest at all?—Very often that is so.

6300. What do you consider to be the capital of the tenant; is it his cattle, or what constitutes his capital?—Well, mainly his cattle; implements and all the rest.

6301. Then what constitutes his tenant-right; is not that capital?—Well, yes, but I am not counting that; I am only counting a tenant who is in occupation.

6302. Then, if he cannot get any interest on his capital, and his capital may be animals, he would be at a positive loss if he had to pay something for the buildings and so forth for getting into the farm?—He would. That is, in some cases. I do not mean to say that every tenant is in that position, but I know there are a great many tenants find it very hard to make ends meet.

6303. That happens to be so in England as well as in Ireland. In that case, if the rent at all is fixed by the Commissioners on the status of judicial rent, is it not an obvious advantage to the landlord to have the rent fixed on what it is possible to get out of the land?—I think it is an advantage. I remember 1848, for example; the value of land came down immensely in the market then, and I think it is highly

Mr. *Fuller*—continued.

probable that, had not it been for the working of the Land Act, the same thing would occur now. Owing to the number of farms there would be in the market, land would be cheapened very much.

6304. What I want to know is this: it seems, as far as I can gather from your evidence, that the rent, although it is called a "fair rent," is a very unfair rent so far as the tenant is concerned, but is it not unfair towards the landlord, because he gets something that is not his; is that so; it really is taking the money out of the tenant's pocket, so that is unfair to both?—The landlord would have more of the advantage, no doubt. If the tenants failed to meet their engagements, I think the landlords would then suffer. Of course there is a change that may occur in the management of land that would alter the condition somewhat. Now, supposing a farmer made at one time his rent through tillage, he may be able to hold out longer by altering his system and bringing in some pasture with it. In that way the tenant is driven a little, as it were, to the wall, but even with the change I think the necessity for considerable reductions in rent is very great, to meet the downward tendency.

6305. I gather from you that the capital invested by the farmer reaps no benefit?—I did not say that in all cases, but in many cases.

6306. In some cases; and inasmuch as there is included in the capital buildings which are not taken into account, the landlord gets, as far as I understand, the security of the buildings for the rent that may be fixed under these Acts of Parliament; is that so; supposing a tenant fails, the landlord may take possession of those buildings as his own, and all that capital that used to belong to the tenant falls into the hands of the landlord?—I do not think he can take possession of the buildings under the Act of 1870; I think the tenant is entitled to the benefit of his improvements on quitting the holding, except to the extent of liquidating the arrears.

6307. As far as I gather it is this: the rent at the present moment is hardly enough in some instances to pay interest upon the capital of the tenant; if that rent is not paid the whole of the buildings that do belong to the tenant go to the landlord?—Only so far as to meet the arrears.

6308. Is it your feeling that the landlords in fixing a fair rent according to these Acts of Parliament have everything on their side to be satisfied with; there is nothing in the case you suggest to improve the condition of the landlord, is there?—I think the landlord's interests are fairly guarded by the Acts.

6309. You can suggest no alterations to improve their condition?—No.

6310. I have not heard your previous examination as regards other things, but as regards fee farm grants, do you consider the system of renting the improvements of tenants a great hardship?—Oh, yes, I would think so.

6311. And the exclusion by sub-letting also a great hardship to the tenants?—Yes, sub-letting under certain conditions.

Mr. *Fuller*—continued.

6312. Do you consider that the necessity of proving their improvements on the part of the tenant is a hardship upon the tenant?—Yes, I think that is a hardship.

6313. Do you think it is hard in many instances that town parks should be excluded?—Yes; a town park is managed often by a man who is living by agriculture in a different way. The fact of his living in town whilst dealing with his agricultural produce to the best advantage should be no bar to his having a fair rent fixed.

6314. In your experience do you find men holding town parks very highly rented, and therefore think it would be fairer to them that they should have a fair rent fixed?—Well, we have not much experience of how they are rented, because what is manifestly a town park does not come before us.

6315. Do you think that the law costs in the general land procedure appeals and so forth keep many tenants from applying for a fair rent?—I do not think so; I think if the tenant is aggrieved he will not be kept out by the law costs, to any great extent.

6316. I thought I gathered from a question put to you just now that improving tenants are very likely to be deterred from coming into court because of the fear of being rented upon their improvements; is that so?—Yes, I think so.

6317. I am a little in doubt about the way in which you value what is called the specified value. In Question 5590 you are asked this: "I only just want to get at it in figures: suppose you fixed the fair rent at 40*l.* and the competition rent at 50*l.*, what would you then consider the specified value to be?" Your answer was: "In that case, at 4 per cent., it would be 250*l.*" Well, that is clear enough as regards 4 per cent., as between the difference of 40*l.* and 50*l.*, but does not that specified value mean all the tenant's value of his property, all the property that belongs to the tenant, all his right in the holding?—That question was not put to me, but if you regard the competition value as the thing that is sold, as different from the fair value, and the value of the improvements added, a certain number of years' purchase on the future would represent the value of the tenant's interest.

6318. I am not speaking of competition value, or of fair value or of true value, but I want to know whether the specified value as answered in the question there is such as a landlord can redeem, if he chooses, the tenant-right of; does that value of 250*l.* in the case of a farm let at 40*l.* under a judicial rent mean the whole of the value of the tenant's right?—Oh, no, you would add to it the value of any improvements that the tenant had made.

6319. Does not the specified value mean all the buildings and everything else that belonged to the tenant?—Yes, when the specified value is fixed it would be so.

6320. Then on a farm valued at 40*l.* or 50*l.* a year there are buildings which would be worth a great deal more than 250*l.*, would not they?—That would depend; as a rule, in Ireland, buildings are not so very valuable, but whatever was their value, if not in excess of the requirements of the holding, this would be added also.

Mr. *Fuller*—continued.

6321. Supposing they were?—Supposing they were, yes.

6322. I took this as your rule in valuing a specified value for the redemption of the landlord. If that is your rule do you adhere to that strictly?—The rule would be to add the value of the improvements to the value, supposing there were no improvements.

6323. Perhaps you will explain to me how you do arrive at a specified value?—I have explained in the early part of my examination that the process I would have had recourse to in the early days of the Commission would be to ascertain what would be a reasonable amount that the farm would bring if offered for sale through competition, not the extreme but a moderate average, from such evidence as we could get on the spot. For example, now we would be called upon in a district where we were entirely unacquainted with local markets, and other circumstances affecting the value of land besides the qualities of the soil; there might spring up in that district also a special demand for land that we had no knowledge of, being strangers to the district; then we get such information as we can with regard to what farms, when in the market, were fetching, and we deduce what was a fair average number of years' purchase, for the land that was sold in that district, or it may be capitalised on the difference between a fair rent and a competition rent plus improvements of the tenants.

6324. The number of years' purchase of the rent of the land?—Of the rent, yes, a fair rent.

6325. What number?—I might say that we have had very few cases of the kind at all (of the specified value), but I think in Maryborough we got evidence of nine years' purchase of the rent.

Mr. *Brodrick.*

6326. You have told the Committee that you consider that the rents you fixed in 1882 are now too high?—Yes.

6327. But you came to that conclusion because of the fall of prices partly; was it for any other reason?—Chiefly the fall of prices.

6328. I see you said in reply to Mr. Russell that increased cost of labour was one element?—That was with regard to a former period; there is perhaps a slight increase in the price of labour since; I think it is very likely that in some districts there may be more or less, and of course where we would have evidence of the increased price of labour it would affect us in individual cases.

6329. You have been a Sub-Commissioner, I think, since 1881?—Since 1881.

6330. Then you fixed a good many rents in the earlier years of 1882, 1883, and so on?—Yes.

6331. In all the southern counties?—Yes; in the early years I was confined more or less to a few counties, chiefly to Limerick and Clare.

6332. You began fixing rents after a time of considerable depression, did you not?—Well, the

Mr. *Brodrick*—continued.

the length of the period of depression was not very great.

6333. But when you were originally appointed, at that time the prices had been low and times bad?—Oh yes; there were bad times in 1879 for example; but then, you know, we bore in mind to a considerable extent what was the previous history of prices; we did not confine ourselves to the immediate years preceding our appointment, we went back to what would be fair. I think there is a certain fluctuation of prices that must necessarily occur always, and that an accidental bad year such as 1879 was, affecting prices and produce, should not be taken into account too exclusively.

6333*. So far as you considered prices, what prices had you in your mind when you were fixing rents in 1882 and 1883; what years?—Oh, for a considerable period of time, I cannot tell you how long, a long time back. I know butter, for example, was carrying a very high price some few years before that; and for a dairy farmer I think it would make a very material element in the fixing of the fair rent. Calves also were very high. It is difficult for you to arrive from any statistics at the real points which a farmer must take into account in estimating prices. Statistics are misleading on these points.

6334. Would it have been of any assistance to you if the chief commissioners had given any directions as to the system on which rents were to be fixed?—I do not know that it would have been of any assistance to me.

6335. You had no direction, had you, as to how you were to treat improvements or money expended on improvements?—There was a kind of understanding that you would allow the tenant for his improvements in the way of the money expended upon them, but beyond that we understood that the tenant had no interest (no further interest) in the improvements.

6336. You had no directions, had you?—No directions; but our chairman took that view, it was a legal view, that the tenant was not entitled to the improveability; the tenant did not get the improveability if it were there. It very rarely occurred that after the tenant's expenditure in draining, for example, there was much improveability left; indeed, I could hardly call to mind an instance where there was.

6337. In point of fact, if you found a hundred pounds' worth of drainage on the land as an improvement, how would you deal with it?—We allowed the tenant interest on that hundred pounds.

6338. But if you found that the holding was in a certain condition, did you not consider in any degree the effect that that drainage would have had upon it?—You mean if the value of the improvement were more than the interest?

6339. Just so?—No, we did not take that into account.

6340. You considered that the tenant gets the interest alone?—That was the principle.

6341. How do you deal with deterioration. If you go over a farm which you see has been overcropped, do you value it as you find it?—We would value such a holding as if it were fairly managed, I do not mean to say managed in the best condition, but in the usual mode in which land was managed in the neighbourhood.

6342. Do you find it possible to assess a farm at its original value when it has lost a great deal by over-cropping?—I do not think there is much difficulty in it. I think any one understanding soils and his business as he should, can do that.

6343. But in point of fact you do so?—Yes.

6344. If you went over a farm now, which you valued in the year 1882, and you were set to value it at the close of the judicial term, and you found it in a very much worse condition, what effect would it have upon you?—The effect it would have upon me is that I would value it as if it had been in a fair condition.

6345. Would you not expect an appeal if you fixed the rent as it was before, the farm being in a worse condition?—I do not quite understand that question.

6346. If you found the farm in a worse condition than it was before, and you fixed the rent the same, would you not expect to be appealed against?—I think my answer to that was that I would fix the rent in the first instance as if the farm was in a fair condition; in the second instance I would do the same, that is, in the case of deterioration, always having regard to any altered circumstances affecting the making of rent, and I would not be influenced by a fear of appeal.

Mr. *T. W. Russell.*

6347. In other words, you would not allow the tenant to profit by his wilful act of deterioration; is that what you mean?—Certainly, I would not allow him to do so.

Mr. *Brodrick.*

6348. Take the case, now, of where an improvement has been made by a landlord; have you had to fix rents in any of those cases?—Yes, I think so; I may have had a few: not many.

6349. Have you many cases in which the landlord has made improvements?—They were cases in which the landlords made some drainage; and there were cases where the landlord allowed a certain amount for drainage, say, 4*d.* or 6*d.* a perch, for example; also buildings and fences.

6350. How do you deal with the landlord's interest in those cases; how do you deal with his expenditure in improvements which is proved before you?—Supposing it to be the case of drainage and fencing, I would value the land as I found it; I would allow the tenant for his portion of the improvements, and the landlord's improvement would be included in my valuations; because I would value the land as I found it, and I would only deduct from that the amount the tenant had expended.

6351. Suppose there were good buildings on the farm which belonged to the landlord, would you deduct those from the value of the holding in fixing the rent?—I would not. If I valued the holding as a going concern, including the

Mr. *Brodrick*—continued.

valuation of the buildings and that of the land, then I would not allow the landlord any more; but if (as is the practice) I valued the land exclusive of buildings, then I would add for the buildings in addition, and give that to the landlord if the buildings were his; that is, such buildings as were suitable to the holding in an agricultural sense.

6352. But supposing in a case of this kind that you found buildings on the land of the value of 300*l.*, and the ordinary buildings which the tenant would put up for himself would be valued by you at 100*l.*, say, what do you do with the remaining 200*l.*, do you ever give the landlord credit to the extent of 10*l.* a year off the rent, or not?—If there were such buildings as would be suitable to the requirements of the holding, I would give the landlord the full value; but if they were buildings the profits of the holding could not pay for, I would feel obliged to confine myself to the value of buildings suitable to the holding.

6353. Have you ever been asked in such a case to fix the specified value?—I do not remember.

6354. Do you happen to remember a case on Lord Leconfield's estate which you decided in 1884, it is some time back; it is the case of a large farm in which the valuation was 325*l.* and the original rent was 400*l.*; and did you fix the judicial rent at 400*l.*; and then were you asked to fix the amount of the specified value, and did you fix that at 1,400*l.*, and did not the landlord show before you an expenditure of 1,252*l.* before 1881?—I do not know that I was in that case; I may have been, but I do not remember it. Was I in that case?

6355. Yes. You may look at the paper if you like. These are the figures of it, it is the top case on that sheet. I only wanted to know how you arrived at the specified value in that case (*The document was handed to the Witness*)?—I am not sure that I was in that case; I may have been of course.

6356. You fixed a specified value of 1,400*l.* upon that?—Perhaps so.

Mr. Leese.

6357. Did you ever fix rent in that case?—I have no recollection of it.

Mr. Brodrick.

6358. I have got the information direct from the agent that you did fix the rent, but if you do not recollect it I will ask you a general question?—I do not recollect it, and I have some kind of recollection that I was not on it; I think my colleague was on it.

6359. Do you remember fixing some rents on the Leconfield estate?—A good many.

6360. But you do not recollect fixing a specified value on the estate?—I have no special recollection; I may have fixed a specified value.

6361. Will you take it from me that you did fix a specified value there of 1,400*l.* on that farm; that being so, could you give us any guidance as to how you would arrive at that figure having

Mr. *Brodrick*—continued.

regard to your fixing the rent at exactly the same amount as the original rent of 1850, and at which it had remained from that time?—My answer to the question is involved in my answer to the previous question; that is, the principle that I would adopt in fixing the value of the buildings, that is if they were suitable to the holding, or if they were such that a tenant farming fairly well, could pay for them.

6362. Then if they were not what would you do?—I say the principle of fixing specified value would be involved in the answer that I made to the previous question—that I would take into account the suitability of the buildings to the farm.

6363. You fix the rent on your general knowledge, do not you, of the value of land?—Yes.

6364. Not, as I gathered from your previous examination, by any particular rules—rule of thumb, rule of prices, or anything else?—Certainly I would take prices into account. Prices have a very important bearing on the value of land; for instance, if you pushed the question you might say, If I get a big price I can pay a big rent; if I get a small price I can only pay a small rent; if I get a moderate price I can pay a moderate rent.

6365. You are guided a good deal by your general experience, are you not?—Certainly.

6366. You went to fix rents on an estate in which there was no tenant-right; you are aware that that is so in the case of the Leconfield estate, are you not? Something had been paid on that estate for the right to come into the farm. Do you know whether on the Leconfield estate anything was paid by the tenants to come into the farm?—I don't know.

6367. You were aware of that, that would have been brought before you at the time?—I do not know that I remember anything about that. I think, in many cases, the tenants did not come in, but that they were old tenants.

6368. Even if they were old tenants and their improvements had been made by the landlord, you would admit that they themselves had nothing but their interest to sell; they had not improvements to sell?—That is true if that were so. I do not know whether in all cases the tenant never made any improvements. You see I do not know if all the improvements were made by the landlord on Lord Leconfield's estate. I remember a case where we were not empowered to fix a fair rent because it was an English managed estate. I think we had a case or two of that sort and we did not fix a rent. Now I do not know that Lord Leconfield in all cases made the improvements; if he did, I think he would have contested that point and excluded a great many others from the fair rent provisions.

Mr. *Sexton.*

6369. Is the Leconfield estate an English managed estate?—We only found one case I think of that kind on it.

6370. Is

Mr. *Sexton*—continued.

6370. Is the Leconfield an English managed estate?—No, it is not; if it were we would not have been able to fix the rents.

6371. The improvements were made by the landlord, I think, in substance, but they were not maintained by him?—They were not.

Mr. *Brodrick.*

6372. Now I am not asking you about the holdings that have been ruled out as "English managed," but holdings on which you have fixed rents. Where you fixed the rent in the case which I have been taking, you fixed a specified value of 1,400*l.*, and you had shown you landlord's improvements of 1,252*l.*. I am not questioning the decision, but would not the effect of that decision be, that the tenant would have the right the next day of selling the improvements made for him by his landlord?—No, for the landlord could claim pre-emption, and rent was also allowed to the landlord on the buildings suited to the holdings.

6373. I will ask the question in this way. What would be the position of the next tenant who came in; who will own the improvements then, he or the landlord?—You ask me whether the next tenant or the landlord would have the improvements?

6374. Yes?—I do not think that the landlord's claim to the improvements would cease, I do not see how it would. As I said before, we do not value the improvements according to the amount of money that is spent upon them, that would be a very fallacious principle, and we have not done so. You may as well say that we should allow the tenant 5 per cent. on every penny he has spent on drainage; but it is only according as that amount of drainage would be a benefit to the holding that we allow it.

6375. You take the value of improvements as you find them on the day you inspect the holding?—Yes.

6376. Supposing the value is shown, and I do not understand that you contest that on the Leconfield Estate the value was shown, if you allow the tenant to sell the specified value of his holding, including those buildings, does not he in fact, sell his landlord's improvements?—We would not give him the buildings in the specified value; we value the holding, then the buildings are in that holding. If the buildings were the tenant's we would add the value of them to the specified value; if they were the landlord's, there they would remain with a suitable rent on them and not given to the tenant.

6377. I understood you to say a few moments ago that where buildings are in excess of the value which the tenant would require for his holding, you cannot calculate them as a deduction against the rent; is that not so?—Yes, as an addition.

6378. Then in that case there is something remaining which you have been able to allow against the rent and which an incoming tenant might desire to obtan; is not that so? An incoming tenant likes a good house as well as any other man?—Yes, but he cannot pay for it.

6379. And in that case, when he buys it he buys the advantage of the improvement?—But the landlord has a power of pre-emption remember; the landlord can buy it, and ther e is rent charged on the buildings if suitable, or so far as they are suitable.

Mr. *Brodrick*—continued.

6380. Yes, the landlord has power to buy back his own improvement?—Certainly, he can buy it back. In any case he gets the agricultural value of the buildings includde in the rent.

6381. That is to say, he may give the improvement, and then buy it back again?—And then buy it back.

6382. How do you deal with cases where tenants have been "burning" land; how do you find it possible to assess the amount in that case?—That is a question which has not turned up in recent years in my experience. It was a very serious thing, and it is rather a difficult question; we found in certain districts, in the county of Kilkenny, for example, two or three processes of exhaustion were had recourse to. I should attribute these processes to the ignorance of the principles of agriculture, not only in the case of the tenant, but in the case of the landlord who permitted it at the time. There were the three processes of exhaustion practice, in Kilkenny on many farms, burning, liming to excess, and marling. Well, that was done at an early period, and the land to this day has suffered a very serious diminution in value, but we did not deal with that as against the present tenant; if we had done so, we would have fixed a rent that it would be impossible for anybody to pay. We considered at the time that the landlord was getting probably a high rent, that these lands had been let to the highest bidder, that the landlord in all probability connived at this when he he was getting the high rent, the exhaustion process followed, and it is a terrible loss to all interests to this very day.

6383. If you were satisfied that the exhaustion was caused by burning, by the present tenant, you would not give him the advantage of that?—Certainly not, if it were caused by the present tenant.

6384. But if the exhaustion was caused by "burning" by the predecessors in title, in that case you would hold that it did not come under your jurisdiction?—We had no knowledge of that, and even though we had the principles of agriculture were so little understood, that neither landlord nor tenant appreciated the harm that was being done. The tenant "burnt" and found that he had got a large crop, the natural conclusion was that continuing to "burn" would continue to give him a large crop, and he continued to "burn" until he found that he was minus the crop. Then somebody found out that there was another process that would not exhaust, as he imagined; this was liming. For example, the liming came in and it produced an enormous crop, it was a great fertiliser! there was no end to it! They then turned to lime until they found that lime ceased to produce a crop. Again another thing was marling! and they pushed that to the very end; and we find, at this day, a great difference of opinion with regard to artificial manuring. The whole thing

Mr. *Brodrick*—continued.

clearly proves the necessity of being educated in agriculture as well as in everything else.

6385. In the meantime the tenant got the advantage of these crops?—I do not say that, for I think they paid very high rents at that time. I remember the history of a farm where 34*s.* an acre was paid at the time of the European Wars; it was necessary to reduce that; the landlord did reduce it and brought it down, I think, to 1*l.* an acre and 18*s.* an acre, and subsequently, in order to get a lease, the tenant paid 22*s.* 6*d.* an acre.

6386. Those high rents did not continue, I presume, after the time you had to fix the rents?—No, they did not in the case to which I refer.

6387. They were temporary increases, you think?—In some cases, high rents did continue in the Land Court; for example, I remember cases where rents of 6*l.* 10*s.* to 7*l.* 10*s.* got up to over 30*l.* by successive risings in four or five successive years.

Chairman.

6388. From 7*l.* 10*s.* to what?—To over 30*l.*

6389. In five or six years?—Yes, in four or five, or six successive risings.

6390. Spread over what period of time?—Not long. I think a few years. The Chairman asked the agent: "On what principle did you do that?" He said they were not risings of rent but temporary adjustments of rent.

Mr. *Sexton.*

6391-2. All in the same direction?—All in the same direction. I do not mean to say that you are to draw any conclusion from a thing like that; I do not think that it was at all general.

Mr. *Brodrick.*

6393. Have you not found cases where the rent had not been raised, but yet there had been "burning" by the tenant?—We have now little or no evidence upon the question of burning with the present tenants. Of course there is always "burning" on bog land, which is rather an advantage; you must have some stability in the soil, and you can only get that by "burning" or "claying," or something of that sort, so that it is part of the process of reclamation.

6394. I want to be quite clear about this practice of "burning." In your opinion where it has been brought before you in your experience as a Sub-Commission, has it almost always been in cases where landlord and tenant have connived viciously together against the soil?—No, I do not put in that way. I do not think there was any connivance. If I found a case where a tenant "burnt," no matter whether the landlord knew it or not, I am certain he would get no advantage from the "burning."

6395. Obviously there must be cases where the tenant has had an advantage?—I think it is exceptional; I think it very wrong; I would not do so.

6396. I want to ask you one question about what you said about wheat. The amount of acreage in Ireland under wheat is very small, is it not?—Very.

Mr. *Brodrick*—continued.

6397. And it has been a great deal reduced, has it not?—Yes.

6398. Therefore the fall in the price of wheat can hardly be taken into account as an element in the fall of prices?—No; it only illustrates how rents were paid in former times, and why reductions should be made. Tenants suffer very seriously from the reduction in the price of wheat; the reduction in rent may not have been made on that account, and when the Land Commission comes to fix a fair rent the reductions are looked upon as excessive.

Mr. *Sexton.*

6399. Would you say that the area of good wheat under cultivation was very large 40 or 50 years ago?—It was very large. It is now practically out of cultivation.

Mr. *Brodrick.*

6400. Should I be wrong in saying that the amount of acreage under wheat is only about 5 per cent. of the whole acreage under cereals in Ireland?—Yes; I think I said in my answer to that question it is quite out of cultivation owing to the reduction in price, although, when cultivated, it gave the tenant a large remuneration for his outlay.

6401. When it was cultivated?—When it was cultivated.

6402. But you are speaking now of the prices in the seventies, I suppose, not the eighties?—Yes,

6403. I mean there were no prices in the eighties which gave the tenant a very large return for his outlay?—No.

6404. Just one word with regard to tenants' improvements: do you think that the landlord can always prove his improvements on a small estate, that he can bring evidence?—I think he is very likely to be able to do it on a small estate. I think he would be more interested in it than the landlord in the larger ones; I think he is.

6405. Who finds it easiest to bring witnesses, the landlord or the tenant, to prove improvements?—I do not know; we have witnesses from both sides.

6406. But who finds it easiest?—The landlord does not require a witness, as a rule, he knows his outlay on drainage, he knows how much he has given; we have to report cases of that sort; he is able to say exactly how much he has given for houses; how much he has given in slate and timber, and how much he has given for drainage. I cannot call to mind any case where the landlord has said, "I have done so and so, but I have no record of it." A tenant cannot have the record of it; he has not as a rule.

6407. Do you find that tenants claim improvements often that they cannot make good?—Well, they call "improvements" often such an outlay as we could not allow anything for because they were futile sometimes. They think them improvements probably, and the land may have been worse than we can very well know, but the land

Mr. *Brodrick*—continued.

land is still bad and wanting the same improvements that are claimed for.

6408. Do you consider that many cases have been brought before you in which tenants under the Act have lost the benefit of their improvements?—I think so.

6409. On what ground?—Well, on the ground of their not being done within the period of 20 years; on the ground of their not being proved to be reclamation—though it was obvious that it may have been done by their predecessors.

6410. Do you mean to say that you know many cases (will you give a case to the Committee) in which you were satisfied that the tenant had made improvements which he could not give you legal proof of?—Indeed I cannot, but just as you have put the question this occurs to me now. I was on an estate not very long ago where a tenant claimed for reclamation, and clearly on getting through the ground we found there was a great deal more of it reclaimed than he had any knowledge of. It was obvious, because it was bog land, and somebody had reclaimed it. It was on Captain O'Callaghan's estate in County Clare, I think. I asked the tenant how long was he there; he said his father and grandfather were there before him, and there was obvious evidence of reclamation, but there was no history of it at all.

6411. Was it valuable reclamation in your opinion?—Certainly, excellent reclamation; in fact, the tenant never made any observation about it at all; he never referred to this, good, bad, or indifferent; he did not claim it; he made no reference to it.

6412. Is not the deduction that the improvements are not there if he does not claim them?—I would not say so.

6413. Are you dissatisfied, then, with the present system under which you have to assess improvements, or do you think, upon the whole, the Act has worked fairly?—I think the Act has worked fairly, but I think the principles are not quite what I should like them to be. I think the reclamation or improvement if made by a tenant, no matter when, when it is a decided advantage, ought to be allowed to the tenant; and I think that would work well for the landlord also, because I do not think you can get blood out of a turnip. The tenant is not "an inexhaustible bottle." He cannot continue to make improvements if the improvement is given to the landlord.

6414. Practically, in many of those small cases what you do is to administer justice as fairly as you can without going into technicalities as to who did—"what?" Is not that your system rather—that you take a general view of the circumstances?—Our system is to act on the evidence we get in Court. We do not go beyond that. If a tenant makes improvements outside these we have nothing whatever to say to them.

6415. You do not put upon the pink paper the exact value of each improvement, do you, as you find it?—Not on the pink paper but on our note book. Suppose he drains a certain number of acres, we put the value upon that; suppose he makes fences, although he proves these,

Mr. *Brodrick*—continued.

except we consider the fences a benefit, we allow him nothing for them. He may farm according to a special idea of his own, and although he expended money on these fences, we do not allow them if we do not consider them an improvement to the holding.

6416. You specify on the pink paper the exact amount at which you assess each?—We do not; we have not done that on the pink paper.

Mr. *W. Kenny.*

6417. You said just now that there was rather a hardship upon the tenant with reference to his improvements, as to the number of years—the 20 years?—Yes.

6418. If a tenant comes in now to get a fair rent fixed he is entitled to be allowed for improvements made since 1850, is not he?—I think the 20 years would apply still, except buildings and reclamation. These are legal questions that I think I should consult our chairman about. Really, as a matter of fact, I never trouble myself about legal questions.

6419. You are quite right, perfectly right; but you remember, of course, the fourth section of the Act of 1870?—I cannot say that I do.

6420. Do not you?—No, I really did not trouble myself about sections of the Act, as long as I had a legal chairman to turn to.

6421. You have served with several legal Commissioners?—I have.

6422. Did you serve with Mr. Bailey, who was examined here?—No.

6423. I think you have served with Mr. Reeves, I have heard you say?—Yes.

6424. May I ask who are the other legal Sub-commissioners you have served with?—I served with Mr. Reeves.

6425. He is dead?—Yes, the late Mr. Reeves, Mr. Burke, Mr. Kane, Mr. Crean, Mr. Tuckey, Mr. Edge, Mr. Trench, deceased; I have also worked with Mr. Greer.

Chairman.

6426. You have them all in your proof?—I have them all down, but my memory does not serve me at the moment.

Mr. *W. Kenny.*

6427. Take some of the principal Commissioners, some of those gentlemen were only temporary Commissioners, Mr. Tuckey, for instance?—Yes; only temporary.

6428. Take Mr. Reeves, Mr. Reeves was a permanent Commissioner; Mr. Kane was a permanent Commissioner; Mr. Greeer was a permanent Commissioner. Used Mr. Reeves to give you directions as to the law you were to apply with reference to the improvements, before you came to value the farm?—In any case that I required any legal question to be answered, that I was doubtful about, I always asked him on the spot; I took down the evidence, and I would say: "Are these to be allowed for," and got the answer on the spot. That was my practice.

6429. I will take one instance with reference to that question of the improvability of the soil.

Mr. *W. Kenny*—continued.

We got a very remarkable instance from Mr. Bailey with reference to the apportionment of an increased letting value as between landlord and tenant, a very remarkable instance. Did Mr. Reeves, with whom you served, ever direct you, before going out to visit a farm, on what principle you were to allocate, as between landlord and tenant, the amount of the increased letting value ?—Well, I can hardly answer that question. I do not know whether he did or not, but I think it is highly probable that he did, for the reason that I tell you. Our principle was to allow the tenant interest for the money he had expended, and recently I think we got some confirmation of that view being correct.

6430. You got a direction that you were, in the first instance, to allow the tenant interest upon his expenditure ?—Yes, that is provided the expenditure created a *bonâ fide* improvement.

6431. Oh, certainly, because you have just told the committee, I think, that there were many occasions in which there was expenditure upon so-called improvements which you would not regard as improvements ?—Yes, of course I would estimate the value, if there were any, but it may not be much in some cases.

6432. Did you find that that occurred in a great number of instances, that claims were made, in regard to expenditure, that you did not consider to be expenditure in the nature of improvements ?—Indeed, yes; it is not uncommon.

6433. Now I just want to ask you again with reference to these directions, because this is a little important. We have been told here that, after giving an interest to the tenant upon his proper expenditure, the law is that the residue of the increased letting value was in every case to be given to the landlord, without any discretion whatever being vested in you ?—Well, that was our practice, founded on our belief.

6434. Then in these cases, if you found that the increased letting value did exceed the interest upon the proper expenditure, would you allow that in every case to the landlord ?—Yes; we would only allow the tenant interest on his money; the landlord had it then, of course.

6435. You have had a long experience now since 1881; have you found many cases in your experience in which, after allowing a proper interest, according to your idea, to the tenant upon his improvements, there was anything left for the landlord ?—Well, there would not be very much.

6436. That is the result of your experience as a practical man ?—Yes; of course there might be cases, but I cannot call them to my mind.

6437. You know several cases ?—Yes.

6438. In cases in which you have fixed fair rents, and in which there have been judicial rents, as I understand in the great majority of those cases, after allowing the interest upon the tenant's improvements there was nothing of the increased letting value remaining for the landlord ?—Nothing in many cases.

Chairman.

6439. In many cases nothing, you say ?—Nothing.

Mr. *W. Kenny.*

6440. Now does that observation of yours apply to a large percentage of the cases that come before you. I am putting it moderately ?—I must obtain from you what you mean by "improvement."

6441. I should rather ask you for that. You may call it by any name you like, but when something has been done to the farm which increases its fair letting value (do not call it an improvement at all, something has been done), you find that that is a legitimate increased letting value which is either to go to the landlord or to go to the tenant, or to go between them ?—Yes.

6441.* Now in cases of that sort, I put it to you, in the great majority of cases that have come before you do not you find when you have allowed a fair interest to the tenant upon his improvements, or upon his outlay (whichever way you like to put it), that there is nothing, or little (I will put it to you that way first) left to the landlord ?—When I was answering the question before, I confined myself to what the tenant claimed as an improvement. There are many improvements which add considerably (and very considerably) to the value of the holding which the tenant never claims for.

6442. Now that is another question. I am confining myself to the case of legal improvements—improvements which by the directions that would be given to you by your legal Subcommissioner, you would be bound to allow either to the landlord or to the tenant, or to both together. Do you see that ?—Yes.

6443. Now in a case of that sort is it your experience that after allowing a fair interest to the tenant in respect of his outlay in these improvements there is little or nothing left for the landlord ?—I do not think I can give a general answer. Where the improvement is draining, that would nearly be so; but where the improvement is due to the bringing in of foreign material (material that the soil does not contain, say, for example, the soil wants potash, or wants lime, or phosphoric acid, farmers know from experience that bringing in lime, at very considerable expense, adds greatly to the value of these holdings), I think in improvements of that kind the tenant is not at all compensated.

6444. Let me ask you, for my own information, is that an improvement in respect of which you could not give compensation ?—The tenant never asks for it, and there is no distinction made between manures brought in and what is commonly regarded as good husbandry, from which the tenant would not be entitled to compensation.

6445. But is it an improvement in respect of which you could not give compensation ?—My own opinion upon that, and it is a very strong opinion, too, is that the tenant ought to be allowed for that when it is a material improvement and adds more to the value of the land than anything else.

Mr. *W. Kenny*—continued.

6446. You have not answered my question yet?—I answer that we do not allow because the tenant does not claim.

6447. Suppose he ought to have claimed, suppose he does claim for this foreign element which is introduced into the soil, are you at liberty to give him that at present?—No; we would allow for the expense of bringing it in, but we would not allow for the vast advantage it would be to the farm.

6448. You would not allow for the vast advantage it would be to the farm?—No.

6449. Upon what ground, why?—The principle that we acted upon there, I suppose, was the view of the law taken by the chairman, that we cannot allow more than the interest on the money the tenant expends.

6450. The interest on the money that he expends?—Yes.

6451. So far as the expenditure goes in the introduction of this foreign material into the soil, would you allow him a fair interest on that?—Certainly.

6552. You would?—I would.

6453. You would allow him a fair interest upon it?—Yes, and that may bear no proportion to the improvement.

6454. As I understand you, the interest upon that would not represent the entire increased letting value?—Certainly not.

6455. Now with reference to the improvement which would be effected by the introduction of this foreign element into the soil, would you call that a permanent improvement?—Permanent, certainly. If I put an excess of lime there it will remain until it is exhausted. Permanency is only a question of degree; but it is practically permanent; it is as permanent as drainage.

6456. Excess of lime would not be a permanent improvement, would it?—If I cropped according as I put on the lime and removed the lime by the cropping, then it would not. Tenants have brought lime to the mountains in Tipperary at very considerable expense, and you can trace it up to the tops of the mountains this day, and the improvement is marvellous in some instances.

6457. What I rather wish to get from you is this: Supposing you found a farm limed, and properly limed according to your judgment in the year 1886, and you had a tenant in the year 1894 claiming for improvement by that liming in the year 1886, would the liming of the year 1886 be exhausted in the year 1894?—I do not think so; in many instances that is according to the quantity brought in and the amount removed.

6458. I say if properly limed in 1886, would it be exhausted in eight years?—That is a question of how it is managed; how you work the farm. If I put the lime on and take off in crops an amount of lime equal to that brought in, then it would be exhausted. On the other hand, if lime were brought in and not removed by any agricultural process, then it remains and should be regarded practically as permanent.

6459. Do you fix any limit of time within which improvements by lime would be exhausted?—Limits of time have been fixed, but my experience leads me to the conclusion that these are wrong, and that lime lasts much longer on the ground than these limits indicate.

6460. Confining yourself to the lime, can you tell me from those scientific authorities, just as the result of them, what is the period that is limited?—I cannot tell you. Lawes has given tables, but I may say my own opinion is (and I studied under the editor of Dr. Liebig's works), that Liebig is entirely right in his theory of scientific agriculture; I do not speak now, theoretically, I speak from experience.

Mr. *Macartney.*

6461. You think Lawes is right, do I understand you to say?—No; I think Liebig is right and that Lawes was wrong in his views.

Mr. *W. Kenny.*

6462. Now upon the particular case I put to you, with reference to the law of the well-known case of Adams *v.* Dunseath, although you are a lay Commissioner, you must very often have heard of that case?—Yes, I have often heard of it.

6463. You have often heard of the principles it laid down or is supposed to have laid down?—As I have told you I leave legal principles to my chairman. I never trouble myself about them.

6464. The chairman has to communicate these legal principles to you?—Yes; then I took them when he did.

6465. We have had a discussion here as to the principles on which fair rent is fixed, having regard to Adams *v.* Dunseath; can you tell me what was the notion of Adams *v.* Dunseath held by W. Reeves with reference to the increased letting value. I want to know whether Mr. Reeves, or any other legal Sub-Commissioner with whom you have sat, has told you how you are to apportion the increased letting value caused by tenants' improvements?—I should say they all did.

6466. But can you recollect definitely what they told you. Has Mr. Kane, for instance, told you how to apportion it?—I have replied to that in my practice; and that practice was followed on account of the principles that got into my head from the chairman of the sub-committee.

6467. I think that is a fair answer. You have followed a particular practice, and followed that particular practice as the result of what was communicated to you?—I have followed that particular practice as the result of what was communicated to me.

6468. You have said that you do not value improvements by the actual expenditure upon them; of course you do not?—Certainly not.

6469. And I presume in a great number of cases you find that either the works that are called "improvements" on the farm have been worthless, or that they have been useless?—And I have found some not claimed at all that were very valuable.

6470. My question is: Do you find in a great number of cases that the tenant claims works as improvements

Mr. *W. Kenny*—continued.

improvements that are really worthless or useless to the holding?—They might, in the way of fences, claim for fences that we would not regard as being of any benefit to the holding, and in the way of drainage, for work that would not be very effective.

6471. You have told us, with reference to deterioration, that of course you do not allow the tenant to get the benefit of his own deterioration of the land?—Certainly not.

6472. And you gave us as an instance the fact that in the county of Kilkenny you found that there were two or three processes of exhaustion?—Yes.

6473. One was "burning?"—Yes.

6474. Another was excess of liming?—Yes.

6475. And another was excess of marling?—Yes.

6476. Does that observation of yours, with reference to county Kilkenny, apply to other counties in which you have fixed fair rents?—I have seen it in Kilkenny and other places, but we have not that in the part of the country that I came from.

6477. That is Cork, is it?—Yes.

6478. It does not apply to Cork?—No.

6479. Then have you fixed rents in Limerick?—Yes.

6480. Have you found it in Limerick?—No.

6481. In Clare?—No, not much in Clare.

6482. Do you instance Kilkenny as typical?—Yes, I think that is typical. Perhaps it is so in Queen's County also. I think I have seen it in Queen's County.

6483. Have you found in any of these counties in which you have fixed fair rent that there are any other processes of deterioration besides burning, liming, and marling?—Yes; selling hay, for example.

6484. I believe that is a very general thing, is it not?—No, indeed it is not; because a great deal of the land in Ireland yields very little hay; the soils are generally light.

6485. But you do find that there is deterioration arising from excessive meadowing?—Oh yes, certainly.

6486. Do you give any other instance?—Tilling without manuring; I think that would nearly embrace the whole; removing crops without sufficient manuring, I mean.

6487. And does that observation now apply in a general way to all the counties in which you have fixed fair rents?—Yes; more or less.

6488. I think you said in regard to draining, as to the mode of your valuation, that you would value the land in the position in which you found it, and then you would deduct the value of the tenant's improvements?—Yes.

6489. Having regard to some answers that were given by some other witnesses, I should like to ask you exactly how you value land where there has been improvement by a tenant. Supposing a case in which land in what has been called its wild state is let at a shilling an acre, but that there are qualities inherent in the land which would render it improvable, and you found it had been improved by an expenditure

Mr. *W. Kenny*—continued.

by the tenant and an increased letting value added to it, what principle, in a case of that sort, would you go upon in fixing a fair rent?—I would estimate what the improvement would cost. The principle I would go on in fixing a fair rent is, that I would allow the tenant, in the first instance, for the interest of the money that I would suppose he had spent. In many cases you might improve the landlord out of the holding. I think I would bear in mind that the land had an original value, which I would still retain for the landlord in such cases.

6490. You might "improve" the landlord out of the holding altogether?—Yes.

6491. Have you any particular rate of interest, or does the rate of interest that you give the tenant vary with the locality?—No; the principle I adopted was that I would give the tenant 5 per cent. for his outlay, considering he had to look after these improvements and keep them up; I would allow him 5 per cent. on a fair outlay for the work that was accomplished.

6492. Is that a hard and fast rule with you, or does it vary?—That is my principle. If the improvements were not good my estimate of the cost of such improvements would be affected; but I would allow still the 5 per cent. That is my practice.

6493. One of the witnesses has told us that the rate of interest varies very much according to the locality?—I have not taken that into account.

6494. Have you found that your colleagues upon any occasions have gone as high as 8 or 10 per cent.?—No, I have not done so, and I am not aware that any of my colleagues have. I don't know.

6495. Now, with reference to your mode of valuing, I think you said that you looked upon the economic rent as a fair rent?—Yes, that is my view.

6496. And, of course, you differentiated between that and what we have hitherto called the competitive rent?—Yes.

6497. That is, the competitive or market rent?—Yes.

6498. And the fair rent?—Yes.

6499. Could you tell us generally what relation one bears to the other in point of amount?—No, I could not tell you that.

6500. Some of the witnesses have distinguished between cases where the rent has been fixed on tillage, and where it has been fixed on pasture; would you say that a fair rent is about 30 per cent. lower than the competitive rent?—My impression is, on account of the scarcity of land coming into the market, that there will be always tenants found who will go according to the length of their purse to get possession of the land.

6501. I want to pursue it just a little further; what do you exactly regard as a competitive rent; is it what the landlord would get if he had the lands in his own hands and set them up in the market to public bidding?—That would be so.

6502. And is it your notion that the rent which would then be offered by a bidder at such an auction would be a rent which would yield him a fair percentage upon the amount which he

Mr. *W. Kenny*—continued.

he would pay?—No, that would be the competitive rent.

6503. That is what I want to see; it is the economic rent which you say is identical with the fair rent; you say the fair rent and the economic rent are identical, do you not?—Yes, that is according to my view.

6504. Is not the competitive rent a very much higher rent?—It is.

6505. Then a competitive rent might be given for a farm, might it not?—It has been given, of course.

6506. When a man gives a competitive rent he expects to make something out of the farm, does not he?—With the competition rent he may; he may miscalculate. I think there are plenty of people who cannot very well estimate.

6507. In calculating what he will give as a competitive rent in open bidding in the market does not he calculate upon simply getting a fair percentage upon his outlay?—He may expect it, but he does not know how to calculate.

6508. He may be disappointed, as many of us may be disappointed and deceived?—He may assume that he will get it; if he does he will make a very wrong calculation frequently.

6509. Put yourself in the position as if you were going into the maket to bid for a farm and going to give a competitive rent for it. Would not you regard the competitive rent as a rent which would pay you a fair interest upon your outlay?—Well, allow me to give you an answer by an example. There was a farm adjoining me that suited me very well, and I asked the landlord for it, and he told me that a neighbour of mine had offered him a pound an acre for it. "Well," I said, "it suits me very well, but if it is to bring a pound an acre I will do without it; but I will tell you," I said, "what I am willing to do. If you know anything of the value of land, go over it and I will give you whatever you think it is worth; or if you think you do not know, you can appoint one or two friends of your own who have knowledge of land, and I will give what they think it is worth." "Well," he says, "that is thoroughly fair; go home and take possession of it." Well, I came home; he came out and saw the land, and he said nothing to me about the value; but I understood that he sent two others, or that they came and "walked" the farm, but to this day I do not know who they were, and he gave me the land at what I consider the fair value, and how much do you think it was?

Mr. *Sexton.*

6510. That is the point?—10*s.* an acre.

Mr. *W. Kenny.*

6511. Would not you consider that that 10*s.* an acre was what we have once or twice heard described as the "live and thrive" rent?—I do not think so. I find it a very hard rent to make to-day, I can tell you.

6512. Do you think it is more than the economic rent?—I think it is now more than the economic rent.

Mr. *W. Kenny*—continued.

6513. You did not think so then?—No, I thought it a fair rent then.

6514. And you were willing to take it at the 10*s.*?—Certainly, I was very glad to get it at 10*s.*

6515. Now put yourself in the position of the other tenant that the landlord told you was willing to give 1*l.* an acre?—Yes.

Chairman.

6516. And, as I understand, you were willing to give the 1*l.* an acre?—No, I was not, Sir. I was confident that no sensible man would give 1*l.* for it.

Mr. *W. Kenny.*

6517. It was you proposed arbitration. Now will you place yourself in the position of the gentleman who was willing to give the 1*l.*?—Yes.

6518. That is very like a public auction, is it not?—Yes.

6519. You are a bidder, your neighbour is a bidder; he is willing to give a pound; then if he is willing to give a pound, does not he expect to make something out of the farm?—I will tell you what I think. He knew very well that I would be a candidate for the holding, and he thought he would offer such a price as would put me out of court; and as a matter of fact that tenant came to grief very soon.

6520. Do you think then that that was merely spite to you?—Not at all; but he would come in perhaps a few years afterwards and tell the landlord (who was a very good man): "I cannot make the rent of this, it is impossible." He would trust to chance to get a reduction on it, and take it at 1*l.* per acre.

6521. Did not he also trust to chance to make something out of the farm; that is my point?—I do not think he considered it at all; his only point was to get possession of the holding.

6522. Has that particular tenant got a fair rent fixed, do you know?—That tenant was ruined in a few years.

6523. Did not you take the farm?—I did.

6524. He did not get it?—But he had an adjoining farm.

6525. He was not ruined from taking this particular farm?—No, but he was ruined from land that he had.

6526. I ask again, are you able to tell us what relation the economic rent bears to the competitive rent?—I could not tell you; it is very wide, I say.

6527. Will you go as far as to say that there is a difference of 30 per cent.?—In that case it was double, you see.

6528. Then it might go as far as 30 per cent.?—Indeed it might.

6259. When you come to see what is the increased letting value which is added by a tenant's improvement, do you look at that increased letting value from the point of view of economic letting value or of competitive letting value?—Economic, certainly.

6530. So that when you come to value the increased letting value at a particular sum, you

Mr. *W. Kenny*—continued.

have already made an allowance to the tenant?—I have, to the extent of the interest on his expenditure.

6531. It is before that I am speaking of. I want to see if you allow anything to the tenant in addition to the interest on his expenditure. Supposing the increased letting value, from a competitive point of view, in the market is 20*l.* a year (*the competitive*), you allow the economic increased letting value, or fair letting value, do not you?—I allow him only the interest on his money, on the increase.

9532. I want you to tell the Committee from what you take off the interest on the money; is it from the competitive letting value, the whole increased letting value, obtained from a competitor in the open market?—I take it off the economic rent.

6533. You take the percentage on his improvements on the economic rent?—Quite so.

6534. With reference to the rents that were fixed by agreement outside the court, Mr. Bailey has handed in a paper, I think you said they were not filed, either by mere accident upon the part of the landlord or his agent?—I do not know why they were not; but they were not.

6535. In these cases in which the landlord and tenant have met amicably outside the court for the purpose of fixing a fair rent, have you found at all in your experience whether or not the tenant was protected by a solicitor in the making of these agreements?—I do not know.

6536. You do not know that?—No.

6537. I do not know whether your experience enables you to say what were the circumstances, as a general rule, under which they came to be fixed. Did the landlord simply say: "there is an abatement of your rent," or "go in and get a fair rent fixed"?—I have no knowledge of that.

6538. Now I think you have also told us that in your experience the landlord never had any difficulty in proving any improvements that were made by him?—That is my experience.

6539. Mr. Bailey, who was examined here, very fairly told us that his observations upon that only extended to the big estates. I do not know whether your experience confirms him in that. In the smaller estates the landlord suffers, does he not, from the same disadvantage as the tenant would in similar circumstances?—Improvements by the landlord in the smaller estates, and even in the bigger ones, are very exceptional; they are very rare.

6540. Do you find that there is a difference between large estates and small estates?—No; I cannot say that from any experience I have had.

6541. In the case of the smaller ones, then, do you consider that the small landlord has got records?—I think he knows very well; he has as good a means of knowing as a large landowner,

6542. Do you find that on the smaller estates books have been kept to enable the landlord to prove improvements made by him?—Certainly; he knows what he has allowed the tenant; he does not as a rule make the improvements himself.

6543. And do you find that the allowances to the tenant take the form of yearly abatements in his rent?—No, I do not think so.

6454. But have you not known them take that form?—The money is sometimes borrowed from the Board of Works, and in that way it would take the yearly form, but the landlord borrows the money and the tenant pays the interest.

6545. Have you not found many cases in which the tenant has constructed some work which he calls an improvement, on which the landlord in the particular year in which the work was done has given the tenant an abatement in his rent as compensation for it?—Where the tenant makes the improvement.

6546. Where the tenant has made the improvement and the landlord says, "I will compensate you for that; I will pay you the value of it;" have you not found in your experience that compensation has been made in a great number of instances by the abatement in the particular year's rent, or perhaps in the following year?—No, I do not recollect anything of the kind.

6547. Now, upon the question of turbary; I want to understand, some lay members of the Committee perhaps wish to understand, exactly how the question of turbary stands with reference to the tenant's rent. If the tenant, previous to getting a fair rent fixed, has had the right to take turbary, either from a bog in the ambit of his holding or from a bog in the ambit of the landlord's estate, is not that reserved to him if he has the right in fixing the fair rent?—Yes, if he has the right.

6548. He may have the right in common with a great number of tenants over a particular bog. Where he has exercised that right as a right in common with other tenants to take turf, that right, as I understand you, is preserved to him by the Sub-commissioners?—Certainly, where he has the right.

6549. That is the legal right. Now I will put the other case. In the case where he has only the turf by favour or by the leave of the landlord, that is a right you cannot reserve to him?—Well, that is a privilege.

6550. Certainly, but these are the two cases?—Yes.

6551. Have you not found in your experience that tenants have over and over again claimed to have the right of taking turbary?—Claimed?

6552. Yes; to have the right of taking turbary?—Yes.

6553. You have found that they have claimed the right to take turbary, and that you have had to allow it?—Yes, if the tenant were able to establish the claim; the chairman would determine that point.

6554. My question was only applied to cases in which the tenant was in a position to establish his right. You said that the change of rent since

Mr. *W. Kenny*—continued.

since 1887 would be altogether due to the difference in prices, did you not?—Yes.

6555. Did you find that there was a very exceptional fall of prices in 1885 and 1886?—You know prices fluctuate a good deal; there is a regular downward tendency.

6556. Since when, please?—It is continuing.

6557. From what date?—Since 1879. There was an increase then for a few years, 1882-1883; and then comes the turn down again.

6558. I would like to ask you for one illustration?—You must take me in a very general way with regard to this.

6559. So I am. Up to 1879 you were a practical farmer; at that time and up to 1879, have not prices been gradually increasing?—I took a series of years; I really did not keep an account of the years. Farmers are quite prepared to take accidental bad years, and we will have exceptionally good years; but I take a series of years.

6560. I will ask you a general question if you do not like to be pinned to years. In settling a fair rent you settled it for 15 years?—Yes.

6561. And in settling it for 15 years, of course you took into consideration the ups and downs of prices?—Retrospectively, yes.

6562. And you knew that past years had been very bad years?—Yes.

6563. Then that there had been a fluctuation, and then an increase in prices?—Yes.

6564. So that in fixing the fair rents you simply took an average so far as you could in your own mind?—Yes; so far as affected the particular holding.

5565. Why do you consider that the rents fixed from 1882 to 1887 are fixed at too high a rate?—Because, in fixing these rents, I bore in mind what was the history of the past; now I am bearing in mind what was the history of the past also.

6566. In fixing the rents in 1884 you had the history of the past?—Yes.

6567. We had a fall in price in 1879?—Yes.

Mr. *W. Kenny*—continued.

6568. Had not you several other bad falls of prices before 1879?—Well, no; because if one thing was up another was down; there was a kind of compensation.

6569. Is that the same kind of thing that has been going on since?—I do not think so. In some few districts, they are not numerous, barley is not unremunerative; we only grow oats in my district, because it is necessary to do so for dairy purposes. You must renew the ground; but you must bear in mind that the main thing is dairy, not oats, although we grow the oats.

6570. Does it not come to this, that in fixing rents since 1887 you are looking only at the exceptional fall in prices of 1885 and 1886?—I am taking a considerably larger period.

6571. Taking into consideration that these prices may go up again, and very considerably, what do you say as to the future?—I do not consider "the future," because I do not know anything about it.

6572. You do not consider the future, not even based upon the experience of the past?—Well, I would rather shut out that. I think if I were to think about it, I would be rather afraid that things would get worse.

6573. Does it come to this, that you have fixed rents since 1887 upon your experience of the two years, 1885 and 1886?—Oh no, I would not take two years.

6574. But these are years in which there was the great fall of prices?—There was a regular downward tendency; for example, now take last year. As a matter of fact I let my cows to a dairyman the year before last (two years ago). I got 10*s.* a cow more than I will get now. I very much apprehend that it will be less next year. That means 2*s.* an acre. Well, assuming that my land is 13*s.* an acre, see what a fall that represents in what I can make. A practical man gauges exactly the situation and knows what he can do, and I say there is a general tendency downwards.

Friday, 29th June 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Fuller.	Mr. T. W. Russell.
Mr. Leese.	Mr. Sexton.
Mr. Macartney.	Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. CORNELIUS O'KEEFFE, again called in; and further Examined.

Mr. *Macartney.*

6575. AT the commencement of your evidence, the first day, you gave us some reference to the proportion of the rent to the gross produce as regards dairy land and tillage?—Yes, a rough estimate.

6576. Do you depend upon those rough estimates at all of ratio in your practice as a Sub-Commissioner?—Yes, to a certain extent. Our practice now, I may say, is gradually tending towards the dairy system in a great deal of the country, and the basis of my system depends on what a dairy cow would be likely to yield in certain districts, and the cost of keeping her.

6577. I quite understand your answer, but what I want to find out is this: Is it your opinion (because I really gathered this from one of your answers), that no general rule could be laid down fixing definitely the proportion which the rent ought to occupy to the gross produce?—Not at all. That would vary according to the circumstances, the character of the holding, the markets, the expense of keeping cattle through the year, and so on. That would all vary, and the valuer must have that before his mind in passing through the ground.

6578. As an expert you yourself, from your experience, or from what I may call your technical agricultural education, would never attempt to form in your own mind a ratio which you would apply to dairy or tillage?—No; the ratio would be the result, you see, of the other mode of calculation; the ratio would vary.

6579. Might I ask you how you apply the term "tillage." I will tell you why I ask you: I ask, because in answer to Question 5975 you say that it is hard to estimate the proportion of tillage farms because tillage does not pay at all; I want to know what you mean by "tillage," and how far you apply it, with what limitations; to what do you apply the expression "tillage"?—By "tillage" I meant to imply that corn would be a large element in the consideration of the farmer.

6580. I thought probably you had that in your mind?—Yes, I had.

6581. But of course you do not mean to lay down generally that there are not other tillage crops?—No, but these tillages now are subservient to another system; for example, we are obliged to till to provide winter food for dairy cattle in some farms, we are obliged to till to renew the ground when it is getting out of condition, and when it is not yielding grass we are obliged to till; it is subservient, it is a part of the dairy system which will be modified according to district; not so much of it on the better lands, and more of it on the poorer lands.

Mr. *Macartney*—continued.

6582. I suppose I do not take it from you that the wheat going out of cultivation has a material effect on dairy farming?—No, but it affects it in this way, that whilst we had wheat we could make a large amount of rent compared with the amount of rent that we could make now without the wheat. It is a very material thing in that respect.

6583. Do I understand from you, then, that in your opinion a farm which was very productive and a very valuable farm as a wheat-growing farm, would also be an extremely valuable farm as a dairy farm?—Very often that is so.

6584. Very often?—Yes; in the south of Ireland it is commonly so. I have not enough experience of the north, but I am rather inclined to think from the nature of the rocks in the north they would with the same facilities turn out as good dairy lands as some of our lands in the south; but I have no experience of that. Perhaps they are exhausted by excessive flax-growing.

6585. Confining yourself to your experience of land of which you have had some practical knowledge, I gather from you that the fact that wheat has gone out of cultivation would not affect prejudicially the farmer who is now engaged in dairying, so long as dairying was fairly remunerative?—Of course it does affect him prejudicially in this way: that when he had the wheat, and when it was an element in the rent-making powers of the farm, it was a great pull to him when he could make 10*l.* an acre at a nominal expense. When I say "nominal expense," it was nearly *nil* at the period I speak of; the labour was paid so very little, and the cost of keeping

Mr. *Macartney*—continued.

keeping was no money-cost to the farmer; he was fed with potatoes and milk.

6586. We will not complicate it at the present moment by going over the labourers' question?—It is a very important element in the case.

6587. I have no doubt it is, but I am on this point if you will be good enough to confine yourself to this question of wheat. Supposing that the mainstay of the farm was wheat in the old days when it was at a high price, and, according to your experience, it was a farm that would make an equally good dairy farm, as it had been previously a wheat farm (which you tell me is the case in the South of Ireland) that from the fact that wheat has gone out of cultivation to a very considerable extent (as we all know) in Ireland, the farmer would not be prejudicially affected if he could substitute for his wheat crops the profitable occupation of dairy farming?—Yes, if it made anything like the same profit, certainly; but it does not, you know.

6588. Dairy farming has never made a profit in your opinion?—Nothing like wheat and mixed farming.

6589. Never?—No, although we were able to hold on whilst wheat was gradually coming down and dairy produce gradually going up; there was a kind of adjustment of balance for a series of years, so that it did not affect the farmer to any very extreme extent; he was to some extent compensated, but then, gradually, wheat went out altogether, and now the "dairy" is diminishing in value.

6590. How do you make that out; the price of butter is not going down?—The price of cattle has gone down, and butter also.

6591. If the price of cattle has gone down the price of butter is going up?—The price of butter is not going up; it is coming down.

6592. Not according to the last reports of the Land Commission?—Well, I may say that whilst the Land Commission is taking the greatest pains now, in doing the thing in the best way possible, it is extremely difficult by any system of statistics to give you a fair idea of how these prices affect the farmer. When I was appointed I applied to the Cork Butter Market to get the average of their prices, and the secretary replied to me by saying that it would take himself and a staff three weeks to give me such an average as I required; Subsequently, I succeeded in getting the information, and it was a very different thing indeed from the average as published. It was not done at that time by the Land Commission, but given in "Purdon's Almanac."

6593. There has been a very considerable alteration effected in favour of dairy farmers in recent years, has not there? The Cork Butter Market does not determine the prices entirely in the South of Ireland now in the way it used, does it?—Not entirely; but it illustrates it, I think, very fairly.

6594. But surely the establishment of the dairy factories and the Cork Dairy Association has had a very material effect upon freeing the dairy farmers in Cork and the neighbourhood from the control of the Cork Butter Market?—The prices of superfine butter in the Cork

Mr. *Macartney*—continued.

Market run close enough to what is done by these dairies; and also the difficulty of the question of statistics is illustrated in the case of oats, for example. The average is derived from the price of an article of which there is very little sold in the Cork Market, namely, white oats, as well as from black oats, which comprises the great bulk of what is sold. White oats was formerly very much grown: it carries at present a much higher price than black.

Colonel *Waring.*

6595. I have seen white and black oats specified in the Cork papers and other papers?—I mean in the prices quoted in these statistics; we only get "oats"; there is very little white sold, and it is much higher in price than the black.

6596. I suppose it is a part of the black oats you get then?—Yes.

Mr. *Macartney.*

6597. So far as that goes, even assuming that we do not get the prices of white oats, at all events, we get the prices of some articles consumed under the denomination of oats?—Yes.

6598. So far as it goes, it is a guide, is it not?—I do not think so. Suppose I never sell a grain of white oats, I sell all black; suppose there is a great fall in black oats, you see that fall is diminished by one-half if there is no fall in the price of white.

6599. You tell me there are no white oats sold in Cork Market?—Very little, I say.

6600. If the quotation we see of the prices there must be founded on black oats, then the price of the Cork market must have some reference to the black oats?—It does not give a proper idea of the average price.

6601. I am asking now about the prices in the Cork market; of course everybody must decide what the range of those prices must be, you can find it out by experience?—What I mean is this, that to obtain an average we must take into account the vast quantity that will come in of a certain class as compared with the small quantity of the other.

6602. I do not exactly know why you should make that assumption, because you started by telling me that in your opinion the price of oats in Cork Market was not affected by white oats, none of which were sold there, but entirely depended upon the sale of black oats; therefore all I ask you to agree with me in is this, that therefore that so far as black oats go the prices in the Cork Market have some sort of relative relation?—There is another matter, too; my object is to show you the complexity of the thing, and how valueless it is.

Chairman.

6603. The Committee are well aware of the complexity; do not try to show that; I am sure Mr. Macartney agrees that you need not elaborate it?—We sell oats in two or three months after harvest; the great bulk is sold then.

Mr. *Macartney.*

6604. As a farmer you sell the oats at the time you think best suited to your own advantage, do not you?—I am not talking of myself,

Mr. *Macartney*—continued.

but of farmers generally; they sell the oats as soon as they can after harvest.

6605. If they think they will not benefit by keeping them?—They do it for various reasons.

6606. We need not go into that. I may take it generally that the farmers sell their produce when they think it is most advantageous to them, is not that it?—Quite so.

6607. I do not think you need explain that any further. Then I may take it from what we started with in your answer, that tillage is confined in your mind in that answer entirely to cereal, and probably to wheat, produce?—Yes, that used to be tillage, but there was mixed farming as well.

6608. What used to be called "tillage," but you did not mean to lay down that there are no tillage crops that may not be remunerative at the present moment, did you?—There is food for cattle.

6609. Marketable produce?—I do not think it is very remunerative as marketable produce.

6610. Have you any experience of districts in which they grow turnips?—That would be near a town.

6611. Not near a town at all. I am taking a case of 30 Irish miles from any real first-class market?—Growing turnips for market?

6612. For sale; for consumption by other people?—If they were 30 miles from market they would find it a very difficult process for permanent remuneration.

6613. I have in my mind a case where it has been done year after year?—It cannot be done year after year, unless the farmer takes good care to supply the elements he removes.

6614. I take that as an elementary condition of farming. I am taking the case of ordinary good husbandry; I only want to know, in your opinion, is it impossible now to have any tillage crops that are remunerative; and I suggest to you that laying down turnips for seven, eight, and nine years may produce a remunerative crop?—I have had a great deal of experience of farming and farmers in my neighbourhood, and I do not know a single case where a man relies on turnips to make the rent except to feed his animals on, and I think it would be a very precarious process if he did.

6615. So far as feeding his animals is concerned would you call that unremunerative?—I took that into account when dealing with the produce and estimated it all round at about 2*l.* an acre gross return in average land.

6616. £2 an acre, you say?—Yes, that class of land that would yield 8*l.* to 10*l.* when it was partly used for wheat.

6617. In your answer to Question 5986, in which you are asked what has been the effect of spade cultivation, you said that "spade cultivation is a kind of reclamation in fact"?—I did, yes.

6618. May I take it that in making that answer your mind was dwelling upon what, in my district at all events, we call mountainy farms, farms on the edge of moorland?—Yes, I saw some of that in the county of Leitrim (and I daresay that is what you have in your mind), where they do it with the spade.

6619. I want to know what you had in your mind?—I would take in both, I would take, in the south parts of the country, the "Lazy Bed" system, as well as used in Leitrim, for example.

6620. I should like to know as regards what you call "spade cultivation" of land; land that is not in a naturally wild condition; how you can apply to that the term of "reclamation"; is it not an ordinary form of husbandry?—In this way: anything that increases the area or amount of food beyond the normal is a kind of reclamation. Of course you cannot consider land in an unreclaimed condition which is capable of yielding crops, but you have such an addition to the food-supplying area by spade cultivation that it makes a new thing of the farm, so far. I need not describe how it acts.

6621. We all admit that cultivation by the spade is more valuable than cultivation by the plough?—Yes.

6622. But that is all governed by the interests of the man who is farming the land; if he has a large holding the plough is substituted for the spade because it is more economical. If we could all afford spade cultivation I suppose every good agriculturist would use it?—We were obliged to give it up. It was a great means of developing the resources of the soil, but one which we cannot have recourse to in the bulk of the soils of the country at present.

6623. As far as living memory goes back with regard to agriculture, since ploughs, came into use I do not know anyone farming a large quantity of ground who has ever used the spade instead of the plough?—I knew a farmer with 500 acres growing potatoes who cultivated all the potatoes by the spade which were growing on his land.

6624. How many acres did he cultivate in that way out of the 500 acres?—In 100 acres he may have eight acres spade cultivation.

6625. A very small proportion?—No, a large proportion.

6626. Eight acres out of 500?—No, out of 100 acres.

6627. At all events you apply rather a large and loose, or somewhat vague, effect to the word "reclamation," I think?—I only apply it in that particular sense.

6628. You said, in answer to several questions about improvements, that your experience was that improving tenants kept out of court. Now, do you mean to say that you have never known any of the tenants who have farmed well, and who have made improvements on their farms, go into court?—Oh, yes, I have; I say it would have that effect.

6629. It would have that effect?—Yes.

6630. But has it?—I think so.

6631. I mean to say I want to know how far you push this; do you say 50 per cent.?—I cannot answer a question like that

6632. I want to know on what ground you form your opinion, that because tenants have made improvements they will not go into court?—Because if these improvements are made over 20 years they know very well that they will not get the benefit of them; nor, I may add, will they be allowed for under a 31 years' lease.

6633. Some improvements go back 44 years at the present moment, you ought to know that?—I would say manures for example, anything but

Mr. *Macartney*—continued.

but reclamation or buildings they would not be allowed for over 20 years.

6634. Surely we have had it before us already, that improvements now have run for 44 years, that is to say, for 20 years before 1870?—Up to this day it has worked in the way that I say.

6635. I will not discuss it with you, because I do not think you are quite right about it. Now on the question of manures; do you think that manuring land is to be altogether regarded as an improvement and not as an ordinary element in good husbandry?—I think the manuring of land is the great element of improvement, because no matter what you do otherwise, if you do not do that the whole thing is of very little advantage.

6636. Is it not an ordinary element in farming?—That depends upon where you get the manure from. It is not an ordinary element to bring into the land manure supplying constituents that the land has not in it.

6637. Do you mean to say that outside Ireland farmers in other countries (I had better not complicate it by an application of the Irish Land Act) never manure?—Where manure was not applied, as in Virginia, the land has become exhausted from the growth of tobacco; in Sicily, where manure was not supplied, it has also become exhausted.

6638. Is it not the habit in England, in Germany, and in France, to use manure apart altogether from the consideration of improvements?—It must be the habit if they want to keep the land in condition; but unfortunately we have too many illustrations of where land has been exhausted by sufficient attention not being given to that subject.

6639. Quite so; I am not at all quarrelling with you or suggesting that manuring is not a very valuable instrument. Then I take it that frequently in your experience as a Sub-Commissioner you have come across a very large number of cases where land has deteriorated from the fact that this practice has not been followed out properly?—There were some cases, yes; and in these cases where there was deliberate injury done, as I have stated in my evidence, we did not allow it; but where the practice of agriculture was of a certain class or kind all through the country, even though to my mind it would not be what it ought to be, I would not count that against the tenant, because it was the general system and he did not see that it would exhaust the land. For example, to grow oats and wheat time after time was an exhausting system, but it would be hard to count that against the tenant, because the landlord did the same thing, and he did not see that it was exhausting the land.

6640. Then I take it that, in your own case, where the process of deterioration did not proceed deliberately from negligence and from ignorance, you fixed your rent on the value of the deteriorated land?—Where there was no special deterioration, nothing special, I do not think we are called upon to adjust rents because of the defect of a system which was nearly universal.

6641. I only ask you what the result is. Now with regard to sub-letting (Questions 6001 and 6002), I want to ask you with regard to your answers whether you think that the provisions of the Act of 1881 and of the Act of 1887 with regard to labourers require amendment. I understand with regard to mill holdings and the question of sub-letting that in your view it was a great hardship to the occupier of a holding that he was put out of court by a corn mill which had fallen into disuse and was therefore of no further use to him. You think that that injurious element to the tenant in sub-letting ought to be remedied?—I think so, in the present condition of the milling industry and from its past history.

6642. But regard to the sub-lettings that are used for the purpose of the holding, do you agree with the limitations that are put upon them by the Act; for instance, that they shall not exceed half an acre in extent, and that they shall be in the proportion of 1 to 25, not exceeding 50, and so on in proportion for every 50 acres?—I think a hard-and-fast rule of any kind would be a hardship. A man may have a large piece of ground detached from his farm that could not be worked profitably in connection with the farm; it may suit another man, and he could make more of it, and it would be better for the landlord even that those lettings be made separately rather than conjointly. I think that the proportion there would not alter the question very much, even although it was a far larger proportion than that put down; I mean that the portion that would be sub-let might be a good deal larger under certain conditions.

6643. You mean the proportion per acre of tillage land?—Yes.

6644. Then the Act of 1887 went rather further than the Act of 1881, and the proportion of the Act of 1881 was done away with. As far as I understand it at the present moment you are not obliged to exclude the holding from the provisions of the Land Act, provided the sub-letting is for the use of a labourer or labourers *bonâ fide* employed on the farm, and does not exceed its requirements?—I would not confine myself to any proportion.

6645. You are not confined, I am pointing out to you that for the purposes of the Land Act of 1881, and in the Act of 1887, provided the sub-letting to labourers do not exceed what is necessary for the accommodation of the farm, then you need not exclude the tenant. Do you see any necessity to alter that?—That is rather a legal thing, I think. I would make no difference between a labourer and another if the profitable management or resources of the holding would not be interfered with materially.

6646. I am asking you practically; it is not a legal question at all?—I will give you an example; perhaps that is the best way to treat a question of that kind. Suppose you have a piece of ground differing altogether from the main holding in quality, you require to have a different class of animals for it; for example, it would become a very expensive process to have two systems working together for one man; it may suit another man who has land adjoining this part I refer to, and whose system would very well fit into it; for a farmer to separate a piece of his holding and sub-let in that way would in no way interfere with the value of the entire holding or the interests

Mr. *Macartney*—continued.

interests of the landlord. I think it would be rather a hardship to confine the farmer, then, to adhere to any proportion.

6647. At the present moment, as I understand the application of the Act of 1887, suppose you are only dealing with lettings to labourers supposed to be employed for the purposes of the farm, you exercise your discretion?—Yes.

6648. If you think they are not in excess the tenant is not excluded from the benefits of the Act; is not that a safeguard?—I do not think we have a wide discretion in that way; I think the thing has been defined in some way.

6649. But you are not confined. Have you anything to quarrel with?—If we had the exercise of our discretion so that we could say whether the amount sub-let would diminish the value of the holding either for the tenant or for the landlord, that is all I would require. If that is so, that is all I require, but I doubt whether that is so at present; I think it is not.

6650. Suppose at the present moment it is in the discretion of the Sub-Commission to decide whether or not the labourers to whom the sub-lettings have been made are or are not in excess of the requirements of the farm; assuming that to be the case, do you consider that to be satisfactory?—I see no reason why the labourer should not take a piece of ground, such as I describe, as well as anybody else, and work it for his family, provided, as I say, the value of the holding does not suffer.

6651. That is another point. Then do I understand from you that in your opinion the tenant of a holding ought to be permitted to sub-let to labourers otherwise than those whom he employs to any extent?—Yes, labourers or anybody else, provided the sub-letting did not interfere with or diminish the value of the holding; that is what I mean; that is what I intend to convey.

6652. Diminish the value of the holding to whom?—To the tenant or to the landlord.

6653. Now wait a moment; just stop for a moment there. Have you any experience of the rents charged on these sub-lettings to cottier tenants in Ireland or to labourers?—Oh, yes; we came across these and we found them excessive.

6654. Excessive?—Yes.

6655. I want to take that by steps; you can further explain it afterwards if you wish. Therefore, these rents being generally from your experience excessive (and your experience entirely tallies with mine), how on earth could the unlimited right of the tenant to sub-let diminish the value of the holding to him?—Diminish the value?

6656. Yes. I want to know how it could injuriously affect his interest in the holding. You fix a rent beyond which the landlord cannot exact anything for 15 years; then if you give the tenant perfect freedom to sub-let and he is able to do that at a considerable increase—a house and half an acre—on the rent which he pays the landlord, surely it would be his advantage to sub-let to any extent, would it not?—No, there is a protection; a rent can be fixed for the sub-tenant.

6657. I am dealing now entirely with the question of labour. You have told me that in your opinion the tenant should have, I understand, unlimited freedom to sub-let?—I said the thing should be governed by the discretion of the Commissioner who was fixing a fair rent; it would be his business to see whether it was a judicious sub-letting or not.

6658. Do not you think you would be throwing an onerous burden on the already over-weighted shoulders of the Sub-Commission, if, in addition to finding out the fair rent of the farm (which appears to tax all their capacity at the present moment), you threw upon them the question of determining whether or not the man had exceeded a proper discretion in sub-letting on his farm?—I do not think it would; for example, if I find a farm that is compact and tidy, then I think if there is a piece of that sub-let close to the farmyard detracting from the value of the holding altogether, interfering with the proper working of the holding, that would be a very injudicious sub-letting, and detrimental to the holding.

6659. Suppose the tenant was getting a good rent for this; suppose the tenant declared before you that it did not interfere with the working of the holding; do you say, going there and visiting him on one occasion in the year, that you are a better judge, or that you would feel yourself in a position competent to declare the opposite of what the tenant who farmed the holding himself declared?—Oh yes, the tenant hitherto would have fixed his own rent; but now the sub-tenant can come into court himself and diminish his rent.

6660. Then I understand that in your opinion if unlimited freedom is to be given to the tenant of a holding to sub-let, that unlimited freedom ought to be accompanied by giving the Sub-Commission the power of fixing the rent upon all the sub-lettings on the holding between those who own the sub-lettings and the tenant; is that your view?—Well, the sub-tenant can come into court as it is and have his rent fixed by the Land Commissioner.

6661. I know he can now, but I am talking of this: supposing we enlarge the question; of course, the question of sub-letting is hedged round in the Act; I understand you object to this hedging round. Now, if you throw open the question of sub-letting, is it also your recommendation that the Sub-Commission should have power to control the rents of those who sub-let. I only want to know your opinion, "Yes" or "No"?—Excuse me, it requires more than "Yes" or "No." My answer to that would be this. I would say that if these sub-lettings are such that in the opinion of the Sub-Commissioners they interfere seriously with the main value of the holding, these sub-lettings should not be permitted; if, on the other hand, they do not detract from the value of the holding, I think they should be permitted.

6662. I understand then, so far as we have got it at the present moment, that you would throw open the whole question of sub-letting subject to the discretion of the Commissioners, and that if they decided in favour of allowing the sub-letting to continue they would have the right of fixing the rent of the sub-letting; is that it?—No, I did not say anything about that.

6663. I only want to know what is your view?

Mr. *Macartney*—continued.

—I would assume the sub-tenant to have the right to come into court against the tenant in the same way as the tenant goes in against the landlord, and we would have nothing to do with that in the first instance.

6664. But would you give the sub-tenant the right to come in against the tenant; would you propose to do that?—Certainly; so long as the holding was one we would fix the rent on the holding as if the sub-tenant were not there at all.

6665. But dealing afterwards with the subletting, I understand it to be your opinion that the sub-tenant should have the right to go into court and appeal too, as well as the tenant?—Of course.

6666. With regard to this question of the consent or assent of the landlord, of course that would become immaterial if this proposed alteration of the law suggested by you were carried out; it would not matter; of course it would not depend on his assent or consent?—I think the question of assent or consent would settle the matter altogether; certainly, where the landlord assented and was cognisant of the thing, then we would have nothing to say on the question.

6667. But your proposed alteration of the law would abolish altogether the question of the assent and consent of the landlord, because it would then be entirely in the discretion of the Commission, I understand?—That would be only in cases of dispute, where someone disputed the right of the tenant.

6668. I see that you would prefer the term of seven years to that of 15 years for the statutory term?—Yes, I would now, with the falling tendency there is, or if it were rising, either; I think perhaps seven years would be fairer for landlord and tenant if there was not a steady and tolerably uniform system of prices.

6669. But on what ground?—If there was not a very extreme change in prices.

6670. Is that merely because the term is shorter?—Yes.

6671. That would apply to fixing it for one year, would it not, with greater force?—I do not think it is desirable to be constantly upsetting the fair rent of a holding; I think it would take away the mind of the tenant from his real business. I think he has quite enough to do, and I think that seven years would be the lowest that I would say; I do not think it is wise to be unsettling the thing too frequently.

6672. You think seven years would be the lowest, but you say it would be unwise to be unsettling them too frequently; on what ground do you say that 15 years would be too long?—I think if a tenant were over-rented, 15 years would crush him altogether.

6673. But if the tenant happens to be able to struggle through the 15 years at the judicial rent, is it, in your own mind, *primâ facie* evidence that he has not been over-rented?—No; it is astonishing what rents some tenants will pay under trying conditions. It is one of those questions that nobody can understand, really.

6674. In answer to Question 6030, you have alluded to the fall of prices which has taken place since 1881; was it since 1881 or 1887?

Mr. *Macartney*—continued.

—I think it was about 1879. My own view of that question is not to mind prices for a short period, but to take a range and see how it affected a farmer for a considerable period. You see it was not our habit to be looking for a change of prices for a short period; we took it according to our experience for a considerable number of years.

6675. May I take it from you that in 1881, 1882, 1883, and 1884 your mind was directed more or less to prices?—Oh, yes.

6676. With a retrospective attitude, you were not looking forward, were you?—No.

6677. It was entirely retrospective?—We were looking forward to a certain extent in this way: we saw that prices were maintaining a high standard for a series of years, and that there was a serious change in or about the year 1879. Then in 1882 and 1883 there was a turn upwards again, and naturally we would be under the impression that we would have a return to the old state of things.

6678. That is what I rather understood from your evidence; but your mind, in its retrospective glance, was considerably affected by the fact that from 1852 and 1853, up to and including 1882, and I think 1883, with the exception of the year 1879, there had been a constant and steady progression in the increase of all prices?—No, I would not say that, but I would say in the main prices of cattle and dairy produce improved, whilst corn, on the other hand, became depressed.

6679. Well, in the main?—Corn was constantly going down.

6680. Except in wheat, there had been a fall?—Wheat and corn generally.

6681. Not oats?—Yes.

6682. Oats?—Yes.

6683. Are you certain of that?—Indeed I am, confident. There was a serious fall too.

6684. A very serious fall in oats?—Yes.

6685. I will not go into that with you. I will leave that answer as it stands. May I ask, with regard to the main products of farming, whether there had been, at all events, an increase, from 1852?—There was an increase from 1852 in nearly all, but then in some years (I could not say exactly about the period) corn began to go down, whilst cattle and cattle produce did not go down, nor sheep. There was a kind of compensation there which enabled the farmer to hold on very well until the period that I speak of; and then the cattle (and butter too) went down. As for pork, that was a very unsteady article, and a good many farmers thought they had better have nothing to say to it, because it was so fluctuating; you would have a very high price perhaps for a day or two, and then down it would come suddenly, and you did not know where you were.

6686. That is only your own opinion about these prices?—I know it very well; the average on pork was a very delusive thing.

6687. What I want to get is that in these early years your mind, I understand, had been affected by the fact that prices, at all events, were much better than what you consider them now?—Yes, in the early days.

Mr. *Macartney*—continued.

6688. And that they maintained a fairly remunerative level, and that there was nothing to induce you, as a practical agricultural expert, to foresee any violent change?—No.

6689. That is not unfairly representing your attitude then?—No, except that I knew I was out of the profit of corn.

6690. Just on that question of wheat; at the very highest the proportion of wheat cultivation in Ireland to the general area under crops was never higher than 11·32 per cent., which is not very considerable?—I think that is very considerable. What are the other crops?

6691. Oats, of course?—You would have oats, you would have hay, you would have potatoes and barley.

6692. You would have several crops exceed that 11·32 per cent.?—You would have several crops to make up the remaining part of the 100.

6693. But that is not a very high percentage?—If you put that as what it would be on a farm of 100 acres, you would find, although it is not a high percentage, that it would amount to nearly the whole rent, that is to say what you would make on your wheat.

6694. I am not on the question of acreage, not what you paid your rent out of, that is a matter that would keep us here too long; but it had fallen at the time you were considering these prices in 1881, and so on. In 1885 the average percentage of wheat of the total area under crops was 3·56?—It was practically out of cultivation then.

6695. I mean to say it was not a material element in the produce of Irish farming?—No, not then.

6696. Being in that position, having regard to the steady maintenance of these prices, may I ask you, not looking forward to any violent change, how it was that there was what I may call a universal reduction of rent in those early years?—Suppose you have a fall of 25 per cent. in prices.

6697. But there was not a fall of 25 per cent. at the time you fixed those early rents?—Oh, I think there was; looking back, I am sure there was.

6698. I may take it as your answer to the Committee that the reductions were made in 1881, 1882, 1883 and 1884, through those years, because there was a reduction of 25 per cent. on the prices?—In some things, yes.

6699. In what things except wheat; and give me the date when you say it happened, in what article?—I would think there was a fall in oats certainly, and more than that.

6700. Anything else?—In 1886 I find the average price in Cork market was 4*s.* 5*d.*

6701. I am not going to "1886." I ask you to take 1881, 1882, 1883 and 1884, if you like. I do not want you to go to 1886 at all. I do not want to go to 1885. I am taking these first four years, and I want to know on what grounds the rent was reduced?—I say the farmer was 25 per cent. worse off in his gross return than he would have been in a series of years before.

6702. In the price of labour?—Taking all together.

Mr. *Macartney*—continued.

6703. Supposing you were dealing with what would be the past majority of Irish holdings on which wheat had been grown, at all events at that time for 21 years, and you had in your mind the steady maintenance of the prices of the other principal articles, and the product, on what ground were those reductions then effected?—I would not make a reduction except on a holding where I thought this reduction came in; on grazing holdings, for example, I would not have made them in the same way.

6704. But they were made on all sorts of holdings?—More or less where land was too highly rented at any time.

6705. Have you ever examined the returns of the Land Commission, which, taking county by county, show the monthly reductions all through Ireland, and do not they show quite wonderful similarity in those years whether on pasture, tillage, or bog land, and whether you take Galway or Limerick?—I do not think so.

6706. You have never looked into them?—Well, I do not see them. I saw them at first, but I did not see them recently.

Mr. *T. W. Russell.*

6707. Are the Parliamentary Returns supplied to the Commissioners?—No.

Mr. *Macartney.*

6708. On the question of fixing the pre-emption price, you have told us that your Sub-commission have sometimes declined to fix it; in a case of that sort, is there an appeal from your refusal?—I do not think there was. I do not know whether there was or not.

6709. You cannot say?—No.

6710. Do you recollect any appeal having taken place?—No, indeed; we had very few of them at all brought before us.

6711. Do you think it would be desirable for the Land Commission to give you specific directions as to the method by which you should ascertain either the specified value or the true value?—Well, if there were any principles at all that we should be guided by, it would be very desirable that we should have them.

6712. I am asking you in general; I want to know what your view and experience is?—For example, one man may consider that the specified value ought to be founded on the principle of fixing a fair rent or something very little more than that.

6713. I do not want to ask you to give the reasons, because the Committee understand that the practice is rather various. I only wanted to know from you whether in your judgment, after your experience, you think it would be desirable in the interest of the duties you have to perform that you should receive definite instructions from the Land Commission as to what method you should adopt to arrive at the specified or the true value?—I think the assistant Lay Commissioners should act on some uniform principle, that they should have some one idea in their heads with regard to it, and that one man should not take up one principle of doing it and another man another.

6714. Quite

Mr. *Macartney*—continued.

6714. Quite so, but do you think that that end would be arrived at by having definite instructions?—I do.

6715. Now I want to ask a question with regard to your answer to Question 6126, in which your attention was directed to a paper handed in (I think it was) by Mr. Bailey. There your attention was directed to some cases which Mr. Bailey had drawn up of certain agreements fixed out of Court, not filed, and which afterwards had come before the notice of his Commission. I understood you to state that you had had some unfiled agreements come before you?—Yes.

6716. And that the reductions effected by you had been considerably larger than the reductions effected by the agreements?—Yes.

6717. Now what I want to know is this: Have you been led to form any opinion by these cases that have come before you, as to the adequacy or inadequacy of the rents fixed by agreement, numbering 121,000 or something or other. Do you say that Mr. Bailey's table which we have here, from your experience in similar cases, is a trustworthy guide to enable you to form any opinion as to the adequacy or inadequacy of the fair rents fixed by agreement?—I do not think that is a question for me to answer. I have given my opinion of course believing I was right from my experience.

6718. In Question 6127, Mr. Sexton asked you whether it was "not a matter of the greatest urgency that those men should be allowed by the retrospective operation of the shortened statutory term to come into Court at once, and have their rents revised as the others have by accident." And you say: "I should think so"?—Yes.

6718.* On what grounds?—On the ground that from my experience of the value of land, I found that the rents fixed by agreement were higher than I would fix them. With that experience I would consider it a hardship that these men should not have an opportunity to rectify that, if we were right in our opinion.

6719. You state that the experience you have had in these cases warrants you in forming the conclusion, that the 121,000 agreements formed out of Court, without the intervention of the Sub-Commission, are agreements which are unfair at the present moment?—I can only answer for those that I had experience of, and if they bore any relation to the others, that would be my opinion.

6720. That would be your opinion?—Yes.

6721. Are you aware that the per-centage of reduction on the rents fixed in Court up to the 31st March 1894, is 21·2. That is the last return; we have it before us here. You may not be aware of it, but I put it to you, and the total reduction in the amount of former rents fixed by agreement for the whole of these 12 years is 17·7; that is a difference of a little over three per cent.?—It is more.

6722. It is not four per cent.?—It is not 17·7, and 21·2–3½; it is nearly 3½.

6723. Never mind; it is under four; now, I put it to you that in those 12 years the greatest

Mr. *Macartney*—continued.

difference between the percentage of the reduction fixed in Court and out of Court, was always under 3 per cent., except in five years, and that in 1886, which is one of the three years of the greatest difference, it was 8·97; in 1887 it was 13·99; and in 1888 it was 5·99. Those are the three years of the greatest difference between the reductions effected in Court and those effected by agreement. Now, I want to make this observation, that the percentage of reduction in rents fixed in Court in different years varies quite as much in those 12 years as the percentage of the reduction in the cases fixed in Court differs from the percentage of the reduction in the cases fixed by agreement, and I put this further question to you: Is it not a reasonable probability that the cases settled out of Court were those on which the former rents (the non-judicial rents) had been, in the opinion of the tenant, moderate and reasonable rents?—In coming at these averages you may have a great many of these tenants whose rents would be reduced 20 to 25 per cent., and some not touched at all; but to deal with a question like that, because the average comes out tolerably even, is a very unfair way to my mind. A great many men were suffering very seriously, according to our view, when they came before us. I have no doubt in my experience I regarded some of the rents as very high, and others I considered fair, fixed as they were. That a man whose rent was excessively high should have been obliged to submit to that very high rent for 15 years, would I think, be a very serious hardship on that tenant, whilst the other man had no reason to complain at all. With regard to the proportion of rents that would be too high or too low, I could not answer that question, but I know the impression not only on my mind, but on the minds of those with whom I worked in regard to the matter, that the rents fixed out of Court were, in very many cases, abnormally high.

6724. You have not answered my question. First of all I must point out to you that the difference in the reduction in those 12 years, effected by agreement out of Court, varies quite as much as the reduction made, in that series of years, in Court, and that there has not been any sustained percentage of reduction in the agreements when they vary from 13 to 22?—Are you taking them in the aggregate? I would not reason like that as a Commissioner. That might work out even enough, but would be a very great hardship notwithstanding, in many cases.

6725. That I want you to tell me, or say you will not. I put this proposition to you. Is it not a reasonable probability that the cases settled out of Court were cases on estates or holdings in which, in the opinion of the tenant, the rent had previously been moderate and reasonable?—I cannot answer that at all. I cannot answer as to what the opinion of the tenant may be.

Mr. *Sexton.*

6726. Mr. Macartney suggests that the tenants who had had the rents fixed by agreement out of court were lighter rented than those that came in. I wish to remind you of your answer

Mr. *Sexton*—continued.

to a question that I put to you, that you considered it probable that tenants who had made the most valuable improvements (doubling, in many cases, the value of their holdings) remained out of court through fear that they might be rented on their improvements if they came in?—That is another question.

6727. Do you adhere to that evidence?—I do.

6728. That many tenants remained out of court probably because they had doubled the value of their holdings by improvements, and were afraid of having rent fixed on them if they came in?—Probably there were a great many of those.

6729. Does not that really do away with these averages as to rents fixed in and out of court as affording any test of the cases that came in, or remained out?—Certainly, I would not consider it a test at all. Some tenants on an estate who had no reason to complain would go in because others went in; others may have very grave and serious reasons for complaint.

Mr. *Macartney*.

6730. Then although you decline to express any opinion as to whether my proposition is a reasonable one or not, namely, that those were settled out of court because, in the opinion of the tenant, they were moderate, and only required very small reductions. I understand from you that it is a reasonable probability that those rents are excessive at the present moment?—I said in reply to that that I did not know what was passing in the tenant's mind, and could not answer the question.

6731. In your mind I want to know what was passing?—I could not answer what the tenant thought with regard to it.

6732. I want to know this; In your mind at the present moment, is it a reasonable probability that these rents are excessive or not?—I would not draw any conclusion from the thing at all.

6733. You do not draw any conclusion?—No, not at all from that fact.

6734. From what fact?—From the fact of their not being reduced in the aggregate. I cannot tell what were the reasons that actuated the tenant.

6735. In 1886 the reductions effected in Court jumped from 18 per cent. in 1885 to 24 per cent. in 1886, 31 per cent. in 1887, and 28 per cent. in 1888. Now with those facts before you, do not you think that it is a reasonable probability that the tenants who fixed their rents by agreement with their landlords in 1888 at a reduction of 22·4, or in 1889 at 20·5, did so because they were quite satisfied that the reductions effected by those agreements were fair and reasonable?—I would draw no conclusion from it.

6736. Very well; if you do not draw that conclusion, you need not go on explaining why; they had before them, at all events, the fact that the Land Commission in the court had been giving, in a series of three or four years, very large reductions; and notwithstanding that fact being before them, the tenants in 1889 effected the agreements with their landlords at a reduction of 20·5; that is so, is it not?—That is an average, and I have no sufficient knowledge of facts to come to any conclusion on the subject.

Mr. *Macartney*—continued.

6737. Well, an average?—I would not be guided by these averages.

6738. But in reply to "6145," you have said: "The landlord and tenant both may have a desire to come to an amicable arrangement without the interference of the court; the tenant particularly, I think, would have a desire to settle with the landlord, and, if he could, he would prefer it to coming into court; I do not say that it would often occur, but it might happen that a tenant would incur the displeasure of the landlord by coming into court." Now, assuming that the tenant did incur the displeasure of the landlord by coming into court, in what way could this possibly affect him?—Landlords have been always, or generally, indulgent to their tenants. In bad years, when they could not make their rents very readily, they might give them time or reductions, and I think the bulk of those tenants who are living from hand to mouth (a great many of them), would think it would be not a judicious thing for them to incur the displeasure of the landlord.

6739. Then I may take it that the only way in which the displeasure of the landlord could practically affect a tenant who came into court, is that he might not have time given to him for paying his rent?—There are many ways.

6740. What other ways are there?—Landlords would very often give these tenants timber to build a house, and help them in that way; in a bog district they would have free turf, which would be a consideration, and perhaps some mountain grazing. I cannot tell you everything; but there would be a good many things.

6741. All of which, in your opinion, were valuable considerations for the tenant to entertain?—More or less.

6742. And which he apparently, according to yonr view, values highly?—Yes.

Mr. *M'Cartan*.

6743. And perhaps the question of arrears may have something to do with it, may it not?—Yes, the question of arrears; it did not occur to me at the moment.

Mr. *Macartney*.

6744. You do not agree to the view then, that the tenant who does not come into court is a man without any reasonable intelligence?—I do not; I think a very intelligent tenant may not come into court.

6745. I mean to say, it is not a sign of being absolutely destitute of intellect that he should not come into court to get the rent fixed?—No; for example, a very improving tenant who had spent everything he could in improving the land, may not come into court.

6746. Is it your opinion, then, that the tenant only comes into court when his land is deteriorated?—It is not. I am taking a tenant now who improves, who increases the value of his land very materially. There are intermediate cases where the land is in the normal condition.

6747. In the normal condition; and these are the only tenants who would come into court?—Certainly not.

6748. What percentage do you say of the improving tenants do not come into court; if they

Mr. *Macartney*—continued.

they have never been before you; how do you form your judgment?—I know some of them.

6749. You know them?—I know some of them.

6750. One or two possibly; you form a general conclusion from your knowledge of a few particular instances?—I think it is a very important thing.

6751. What is the district you are now speaking of; you do not speak of the whole of the county of Cork, do you?—I am speaking a good deal of the district between Cork and Macroom.

6752. That is in the neighbourhood of the city of Cork?—Yes.

6753. And in the neighbourhood of the city of Macroom?—Yes, and Bandon.

6754. What union is Macroom in?—I do not know much about the union of Macroom.

6755. I want to know which union is Macroom in?—Macroom.

6756. The only reason I asked you is that all the statistics of the Land Commission are arranged according to unions, and I want to test your statements afterwards?—I take the whole union of Macroom. I don't know much about the union of Macroom.

6757. Now with regard to the question of the tenant dealing with his improvements in court; I take it it is your experience that he has some difficulty in doing so?—Yes, he would have.

6758. Would that apply to improvements he had made himself; I am not talking of building and reclamation, but ordinary improvements?—It might; but it would apply still more to the improvements that were made before he came into occupation. Of course it would apply too in his own case.

6759. The improvements before he came into occupation, excluding buildings and reclamation, for which you would give him, if he proved them, allowances would be fencing, I presume?—I would only allow for fencing where it improved the holding.

6760. Is that one?—Yes, if it added to the value of the holding.

6761. Fencing would be one?—Yes.

6762. Drainage?—Yes.

6763. I only just want to get the list?—Yes, I understand.

6764. Roads?—Well roads not so much in that district.

6765. Well, farm roads; would you consider them an improvement?—Yes, I would consider a farm road an improvement.

6766. Fencing, draining, farm roads, and can you state anything else, manuring of course?—I think manuring very important.

6767. Shall I lump them into "high cultivation," and call it high cultivation?—It may not be high cultivation.

6768. Well, we will call it manuring if we are better agreed on the point?—Call it manuring.

6769. Now with regard to the question of proving these improvements, is it or is it not your experience that the tenant in court proves his improvements by means of expert witnesses; does not he generally call surveyors?—Well they are not very expert; the witnesses that they bring up are not particularly so.

6770. Do not run away with the adjective; I mean what you call a surveyor generally. I am not going to enter into the details as to whether

Mr. *Macartney*—continued.

such men in Ireland are men of great ability or not; at all events he calls a gentleman who imagines himself to be a competent person; is not that so?—I daresay; I cannot answer what a man may think about himself.

6771. These men come before you as skilled; they offer themselves as skilled valuers. do not they?—Yes, but they very often are not.

6772. I agree with you thoroughly, but at all events they are competent enough, or they ought to be competent enough, to measure the amount of fencing that is done on the farm?—Oh, they could do that.

6773. They are competent enough to measure the length and the width of the farm road that is made?—Yes, a surveyor can do that, or without being a surveyor anyone can do that.

6774. Other people can do that?—Yes.

6775. And some of them would be more or less competent to estimate the amount of drainage done on the farm; at all events they offer an estimate of the Sub-Commission, do not they, of the amount of drainage done?—They do not give the estimate of the cost, as a rule.

6776. I am talking about the quantity; do not mind the cost at the present moment. They offer an estimate of the quantity of drainage carried out?—They would in a kind of way.

6777. Which you afterwards often find, I suppose, unsatisfactory?—Often.

6778. But, at all events, the tenant does not rely upon himself alone in offering evidence as to his improvements?—No; he sometimes says that he has made these improvements, and he calls up a surveyor to survey them.

6779. Should not I be correct in saying that it is almost the general rule, instead of "sometimes," that a tenant declines himself to prove his own improvements, but prefers to have them proved by other people?—A tenant would say that he made a lot of drains, and he could not give you much more information.

6780. But then he would call people who would give you information?—Sometimes, and sometimes not.

6781. Sometimes not?—Yes.

6782. I may say in 75 per cent. of the cases the tenant does call people who will give you information which he professes himself unable to give?—Well, I would not say that.

6783. Would you say 50 per cent.?—I really would not bind myself now to estimate a thing like that which was never passing in my mind before.

6784. Would you say 50 per cent.?—I would not say any percentage.

6785. But he does do it occasionally?—Yes.

6786. And, I suppose, it is your experience, having sat for many years, that these surveyors, be they more or less intelligent or more or less incapable, also sometimes give you the benefit of their notion as to the value of these improvements?—As a rule they do not.

6787. As a rule they do not?—Yes; they may say it is good drainage; sometimes they do not say so much.

6788. You yourself of course are perfectly competent to take in thorough drainage and that sort of thing as to the rent?—We do form our own opinion.

6789. Then may I ask you, taking these improvements,

Mr. *Macartney*—continued.

provements, fencing, drainage, farm roads and manuring, which, I take it, are the four principal improvements (I do not think there is any improving tenant who could prove outside reclamation, which I leave on one side), where the difficulty comes in in laying evidence before you?—He has great difficulty in laying evidence before us on some points, such as clearing land of stones; it is a very expensive process, and the tenants never can give any very satisfactory account of it.

6790. Do you find any great difficulty in dealing with that?—I think there is much difficulty; we are much more likely to under-estimate it than to over-estimate it.

6791. Do you deal with that as a reclamation or an ordinary improvement?—It may not be reclamation; the land may be improved before the stones have been removed. I have done some of that myself and have found it very costly; and I am confident I would find it difficult to persuade the Assistant Commissioners that it cost me as much as it did.

6792. But suppose there happened to be a Sub-Commissioner who like yourself had experience of that sort of difficulty?—He would have no ground to go upon.

6793. When you come to a judgment about the fair rent of a farm, may I ask you whether when considering other circumstances you consider the question of the rates and the cess paid upon the farm?—Yes.

6794. And whether the incidence of this local taxation is high or low is an element in the fixing of the rent?—Yes, it is.

6795. It is. If the cess is abnormally high and the rates are abnormally high, you take that into consideration?—I do.

6796. And you make an allowance for it in the rent in favour of the tenant?—I do.

Colonel *Waring*.

6797. Now I hope you will give me very short answers for my questions will not be long. Do you propose or suggest that agreements out of court, if not prohibited, should be greatly discouraged?—I would not either prohibit them or discourage them. I see no reason why agreements should not be made out of court, I have only to say that when they do come into court and come before us the fact has no effect on us. and that we fix the rent as though they had not been made.

6798. You talk of the decline of the cultivation of cereal crops generally; do you attribute that to the fall in prices?—And to the increased expense of labour.

6799. To the expense of labour; at what time did the prices begin to fall then generally?—Well, I suppose about the sixties they began to decline; I could not bind myself to the period.

6800. Are you aware that the decrease of the cultivation commenced at a very much earlier period?—It might have commenced earlier than that.

6801. But it did, according to the returns?—So it might.

6802. You say, "the price of labour"; when did the price of labour begin to rise?—The price of labour has been gradually rising in the way of the system of living of the labourer; and it is not finished yet; it is gradually rising.

Colonel *Waring*—continued.

6803. Of course you are speaking with regard to Munster?—Oh yes.

6804. Of course I am not capable of questioning that. I think you said at one time that the cost of living had increased?—Yes.

6805. In what article of consumption that a farmer consumes has it increased?—Many of the farmers in Ireland previous to 1850, and later, had all their employés fed with potatoes and milk alone; that was the bulk of the food.

6806. Now you are talking of the cost of labour?—That is a part of the cost; that is the living.

6807. I am asking you the cost of the living of the farmer and his family; that is part of the labour that you are giving me; that is part of the wage?—That is the case with the living of the farmer and his family too, in the case of the very large proportion of the farmers, the bulk of them.

6808. I think you are confusing the two things, the cost of living and the style of living. The style of living of the Irish farmer has improved very much, and I am very glad of it. What I ask you is, has the cost of living increased; have the articles which he consumed at the commencement of the period grown dearer at the close of the period, the same articles; that is the only way of comparing it?—The same articles are not employed at all.

6809. Then on that principle I have a right to say that I pay a higher rent because I drink champagne instead of small beer; it comes to exactly the same thing?—I really do not understand your observations.

6810. I want you to distinguish between improvement in the style of living and in the cost of living, they are two distinct things, surely?—Surely the improvement in the style of living involves the cost of living.

6811. Quite so; but the one is a voluntary thing and the other is an involuntary thing?—They are both involuntary.

6812. Well, I will not press you; I cannot get an answer to the question that I put to you?—I would like you to understand me, because I think it has a very important bearing upon the subject; as you put the question I would like to see it out. At the time I speak of the farmers not only lived on potatoes and milk, but they made their own linen as well, and they made their own frieze and other things; in fact there was no outgoing from the farm in the way of money; the labourer got very little wages with his diet, and whatever little perquisites he got he took the little wages he had to pay for them; so that the farmer when he was getting these high prices had nothing to pay, and high rents were the consequence.

6813. Then you do not consider that paying in kind was equal to paying in cash?—I do not think so altogether.

6814. I do not suppose it is "altogether." Now you talked with regard to improvements. Do you consider ordinary good culture, which clearly includes manure, an improvement?—That depends on the source of the manure; that is the point.

6815. Will

Colonel *Waring*—continued.

6815. Will you tell us what your view about that is?—If the farmer is to live at all he must vastly increase the producing power of his farm, otherwise he cannot hold his own; and he can only do that by bringing into his ground a great deal more than he sends out, to increase the productive powers of it.

6816. Then I take it it is only where the imported manure is proved that you would give credit for it as an improvement?—Certainly, if the letting value of the land is increased, I would give the allowance for it as an improvement; a very important one I think it is.

6817. You say it is only where imported manure is applied?—Yes, that is the chief mode.

6818. How long a period do you consider this imported manure will remain an improvement?—That depends on the manure; if we take certain manures, such as ammoniacal and nitrates, I do not think these are of much value, for they are not lasting.

6819. Do not you consider that nitrates are absolutely deterrent for a subsequent crop?—I do think that nitrates are a great help to exhaust ground, if you are not skilful enough to employ them with caution.

6820. That is quite sufficient for me. Now as to farm roads. Do tenants ever make farm roads without assistance from the landlords, in your experience?—Oh yes, they do; I made a farm road myself, and I got no assistance.

6821. I have not the least doubt you did: I am talking of the ordinary tenant?—Oh, I think so; I think we got evidence over and over again of the roads being made by the tenants, such as they were.

6822. I have no doubt they drive a cart along the edge of a field frequently?—Yes, and more than that occasionally.

6823. You talked about employing a number of men on a wet day, and the difficulty of estimating your improvement, because you said, having your men you sent them off on a wet day to do some improvement?—On a wet day for corn, but not too wet for other work.

6824. No; I understand perfectly. Is it fair to charge these men entirely to the improvement; would not you have had to pay them, at any rate?—True; but I think the improvement has a right to be charged with them all the same.

6825. That is a matter of opinion. We all admit the enormous declination in the price of wheat; what has been the effect in late years on the price of the straw of that wheat?—Near towns that is an element that should be taken into account; the straw to a farmer you might take as an article that he requires for his farm.

6826. I admit that for good farming he must have straw. I suppose you are aware, that in some districts the straw is sold?—Yes, where the farmer is so very poor that he would sell anything to make ends meet, or near a town, and may bring manure in return.

6827. You are assuming an impossible rent?—It would be more than an assumption, I would say, in some cases.

6828. Does it follow that the farmer never sells straw unless he has an impossible rent?—As a rule, the good farmer would not.

Colonel *Waring*—continued.

6829. I am not asking you about "good farmers," there are very few of them in Ireland?—The ordinary tenant farmer is not anxious to sell his straw.

6830. That is not my experience; do you ever inquire whether a tenant is living by farming; I heard one of your reasons raise that question?—Well, we often learn that; we do not always inquire.

6831. Do you make any difference in fixing his rent, whether he is living exclusively by farming, or whether he is a shopkeeper, a merchant, or a grazier as well?—That would depend if the farm had an accommodation value; if it were near a town, and the man goes outside to a business that would be convenient for him, I think he ought to pay an accommodation value.

6832. I am not talking of town parks, I do not want to complicate you with the question of town parks: I am not going to ask any questions about town parks?—In the way I put it, you quite understand what I mean; it may be that I have a man with a very small industry, and with a farm, and that the farming would be the greatest industry; in that case I would not charge him with it.

6833. You say, that if you come again upon a farm which you have previously valued, and you find deterioration, you would so fix the rent as, to some extent at any rate, to recoup the landlord for that deterioration?—Certainly, if I saw that the practice was tending to deteriorate the ground, and I saw it had suffered, I would value that land as if it had been fairly managed.

6834. How would you propose to do if you went upon a farm which you found deteriorated, or at least found in a bad condition, which you had not been on before?—I would do the same thing.

6835. You would make the best guess you could at the amount of the deterioration?—I would make more than a "guess," I would form a very good idea of the character of the soil, and know what rent I ought to put on it if in the normal state.

6836. You have given the opinion that a re-hearing is a necessity in fixing rent in future?—Yes, I have.

6837. Will you tell me why you think so; shortly, because I put it to you that you have already gone over the land, you have already formed your opinion upon all these things; what has changed except prices?—Yes, but each farm will have its own history, and its own peculiarities; and if there are two farms, side by side, differently circumstanced, I would deal differently with them; I would be obliged to make a larger percentage of reduction in one than in the other, and I cannot see how, by any process other than by inspecting these holdings, you could arrive at anything like a correct result.

6838. Did not these differences of circumstances exist when the original rents were fixed?—Yes.

6839. What was altered except prices?—You would not reduce on different kinds of land in the same proportion.

6840. I mean, assuming you did justice in the first instance, what has occurred in the meantime to make what was just in the first instance unjust in the second?—Suppose I am

Colonel *Waring*—continued.

obliged to make four times the rent, in order to pay the rent in one farm; supposing on another farm I am only obliged to make twice the rent to pay the rent, surely I must not alter the rents of those two in the same proportion.

6841. No, but what I am asking you is this: if that is the case, is it not equally the case in the first instance as it is in the second instance?—It is, of course.

6842. Then why do you want to know anything but the change of prices?—I have answered that question; I can no more do it in the second than I can in the first; there is no uniform rule.

6843. You have gone back upon the original fixing?—The same principle continues to make the rent different; the circumstances of the holdings are altogether different.

6844. Are the circumstances of the holdings progressively changed; is each different from the other?—They may, or may not be; but supposing they were not different, I would apply the same principle to two farms.

6845. I do not ask you to do that; I ask you to apply the same principle to the same farm at two different times?—I would do that if it required to be worked in the same way.

Mr. *T. W. Russell.*

6846. In answer to Mr. Brodrick you stated that you fixed a good many rents on Lord Leconfield's estate?—Yes, I did.

6847. Lord Leconfield differed from most of the Irish landlords by having at least made most of the improvements, did he not?—He did.

6848. And but for the fact that he had not maintained these improvements it would have been counted an English-managed estate?—In many cases it would.

6849. Assuming, I do not assume it, but assuming that Lord Leconfield may have been rather hard hit by the Land Act, would that fact in any way affect the general run of Irish landlords who had not made the improvements as he had?—Not at all; that was very exceptional.

6850. It is not a typical case at all, but a very exceptional case?—A very exceptional case.

Mr. *M'Cartan.*

6851. Colonel Waring put some questions to you as to the cost and style of living now. I want to know from your experience if it is not the fact that tenant farmers in Ireland, just like the labourers, used to live on very poor and very scanty food?—That is so; they did.

6852. Is it not a matter of notoriety that there was no fresh meat in a farmer's house the whole year round?—Nearly.

6853. And that he was obliged to sell even his butter and his eggs in order to pay the rent?—Yes.

6854. He is living, I believe, somewhat more comfortably now?—He is.

Mr. *Fuller.*

6855. I was not quite clear on the question of specified value. Mr. Sexton asked you: "You understand the specified value to be, I suppose, a certain number of years' purchase of the difference between the fair rent of the present tenant and the competition rent in the open market?" "That was our original idea," was your answer. "Did you apply any certain number of years' purchase as a rule?" Your answer was: "Twenty years' purchase"?—That would be the rule, but that would vary according to the character of the farm.

Mr. *Fuller*—continued.

6856. Now I asked you myself a question further on. I asked you first of all how you arrived at the specified value, because I could not follow your answer to Mr. Sexton quite clearly, and your answer was this: "I have explained in the early part of my examination that the process I would have had recourse to in the early days of the Commission would be to ascertain what would be a reasonable amount that the farm would bring if offered for sale through competition, not the extreme but a moderate average, from such evidence as we could get on the spot. For example, now we would be called upon in a district where we were entirely unacquainted with local markets, perhaps, and circumstances affecting the value of land other than the qualities of the soil; there might spring up in that district also a special demand for land that we had no special knowledge of, being strangers to the district; then we get such information as we can with regard to what farms, when in the market, were fetching, and we deduce what was a fair average number of years' purchase, say, for the land that was sold in that district." Do you remember that?—Excuse me; I meant there a different principle rather, or the application of a different principle. The evidence we got on that point was the number of years' purchase of the rent.

6857. My question followed upon that; my question then was: "The number of years' purchase of the rent of the land?" And your answer was: "Of the rent, yes; a fair rent." Then I asked: "What number?" and your answer was: "I might say that we have had very few cases of the kind at all (of the specified value); but I think in Maryborough we got evidence of nine years' purchase"?—We got that.

6858. The difference, I understand, is this: there are two different systems of arriving at the specified value; one, nine years' purchase of the fair rent?—Yes.

6859. Another, 20 years' purchase of the difference between a fair rent and a competition rent?—Yes.

6860. Is that what you meant in those two answers; is that strictly correct?—Yes, it is; but the 20 years' purchase would be a variable thing. If the land was land that required outlay to keep it up in condition, a large number of years' purchase may not be given; 20 years' purchase would be given if it was land not likely to deteriorate and go back.

6861. Between the competition and the fair rent?—Yes.

6862. If the land was likely to go back?—Yes, and required more labour; you would not give then as large a number of years' purchase

Mr. *Fuller*—continued.

as you would on land that would not require the same outlay.

6863. What I rather point out to you is the great difference that would arise from these two separate systems of valuation. Take, for instance, a 40*l.* a year fair rent as against a 50*l.* a year competition rent, that would be a fair difference, would it not?—Well, yes, perhaps it would; you may put it in that way.

6864. The difference would be 10*l.*?—Yes.

6865. According to the answer you gave Mr. Sexton, that would be 20 years' purchase of 10*l.*, which would be 200*l.*?—Yes.

6866. Then taking the 40*l.* rent, and answering my question, it would not be 200*l.*, but it would be 360*l.*?—Yes.

6867. Would you apply the two different values according to circumstances?—Well, you see that competition rent is a thing that would vary so much that I think it would be desirable that the Commissioner should estimate what would be a fair competition rent derived from the evidence that he could get as well as from his own view, and give the 20 years' purchase of it.

Mr. *Sexton.*

6868. It was urged upon you by Mr. Macartney that upon the whole the average reduction given in agreements out of Court only differed from the reductions made in Court by 4 or 5 per cent., from 3 to 5 per cent.?—Nearly 3½ per cent.

Mr. *Sexton*—continued.

6869. Would you say that the tenants who came into Court were those who were most free to act?—Certainly.

6870. And would you say that those who stayed out may have been under duress with regard to turbary, or fear of an appeal?—They may have been.

6871. You have also said that when tenants have made extensive improvements, which in some instances have doubled the value of their holdings, they have feared to come in lest their improvements might be rented?—Yes.

6872. Therefore it is open to us to assume that the rents of those who remained out of Court may have been proportionately higher than the rents of those who came in?—They may have been if the improvements were not made.

6873. Therefore the circumstance that the average reduction of those whose rents were fixed out of Court by agreement has only been 5 per cent. less than that of those that come in, does not argue anything as to the sufficiency of those rents that were fixed by agreement out of Court; they may have suffered considerably, nevertheless?—They may.

Mr. LAURENCE DOYLE, again called in; and further Examined.

Mr. *Brodrick.*

6874. I THINK when you were here last you were asked what your method was of dealing with increased letting value arising from improvements made by a tenant?—Yes,

6875. Could you tell the Committee how you deal with money proved to have been spent on improvements?—That is one of those things that I leave very much to my lay colleagues; I really know very little about how they deal with the matter.

6876. You do not direct them on the law of the matter?—No, there is no law.

6877. They would report to you what in their opinion was the proportion of the value of the holding that was due to the improvements made by the tenant?—They very often say how much they allow for improvements, how much they allow for drainage, for reclamation, and so on.

6878. Without going into the original cost of the reclamation or the drains?—I do not go into that with them, they make that allowance themselves.

6879. They then take what, in their opinion, is the value, and on that amount the rent is fixed proportionately lower?—Yes.

6880. As a matter of fact, have you inquired at all whether the value of the improvements remaining leave anything besides a percentage for the tenant?—I know generally that it leaves a very small percentage for the tenant. These questions that have been discussed about expending 500*l.*, and increasing the value of the holding by a hundred pounds, do not occur in practice at all; it is a fictitious illustration, used originally by the Master of the Rolls in the case of *Adams* v. *Dunseath*. As I say, they do not occur in practice.

Mr. *Brodrick*—continued.

6881. The general result, I gather from what you say, is that where the tenants have been given interest on their improvements nothing remains?—There is nothing else. I should think if all the improvements were taken into account that have been made over Ireland the increased letting value would not amount to anything like 5 per cent. on the outlay, probably not even 3 or 4 per cent.

6882. Is it not the case that a very large number of improvements that are claimed are not worth the cost—the money expended on them—when they come before you?—Yes; very often the tenant's valuer says that the tenant has made such and such improvements, and on cross-examination he says they are not worth nearly the amount spent on them. A great many of the so-called improvements are merely temporary things, and what the tenants call reclamation sometimes consists in grubbing up furze; it is part of the tillage, and when the land is let out in grass, after a few years, the furze begins to grow again and the thing has to be gone over again; it is not permanent reclamation.

6883. Would you say that in the cases that come under your notice substantial justice is done?—Yes, I think so, except in the case of buildings;

Mr. *Brodrick*—continued.

buildings ; but that is another branch of the subject. I have known cases in which, in consequence of the law about presumption, buildings, undoubtedly made by a tenant, have had rent put on them for the landlord.

6884. Do you mean that he has not been able to prove them?—Yes ; he has not been able to prove them, and I have known cases in which the buildings were undoubtedly made by the landlord on which no rent was put because he was not able to prove them.

6885. Do you find that the smaller landlords are able to prove their improvements as a rule? —No ; not very accurately. Very often a tenant (as Colonel Bayly said) in his evidence states that he has been made allowances for improvements ; very often he puts them on the back of his notice when he is claiming buildings.

6886. I suppose you would find it quite impossible to arrive at the improvements at all unless you insisted upon legal proof?—Of course there are some classes of improvements of which the existence has to be proved; for instance, drainage. If you walk into a field you cannot say whether it is drained or not from merely looking at it. You cannot see how much drainage there is there. You may see water running from an outlet, but that will not tell you at all how many perches of drains there are in that field.

6887. Cannot a tenant, as a rule, bring a neighbour to certify to that which has been done?—Very nearly always, yes.

6888. On the other hand, I suppose there are cases where the landlord has carried out improvements of which he has no record?—Of course there are many cases ; cases where there have been sales, for example, where the new landlord has no record of what was done by the old landlord ; then there are many cases where a receiver has been appointed who has no control over the books kept by the former landlord or agent ; they are very often at "daggers drawn" of course.

6889. With regard to the right of pre-emption by the landlord, it has been suggested by several Sub-Commissioners that pre-emption should be abolished, and that they should be relieved from the necessity of fixing the specified value ; have you considered that question at all?—Well, all Sub-Commissioners dislike having to fix it, because no principles have been laid down by the Land Commissioners for fixing the specified value ; it is not very easy to see on what principles it ought to be fixed.

6890. Colonel Bayly stated, in answer to Question 4027, that when the specified value of the tenancy has been fixed, the landlord could purchase the farm at the sum so fixed by the Sub-Commission, and the tenant would then lose any improvement that he had made in the meantime?—That is not correct ; there is a special provision in the Act about that ; it is a mistaken view of the law.

6891. As a matter of fact, I suppose you rely upon the 8th Section of the Act of 1881, which specially goes to the value of any improvements made by the tenant since that time?—Yes.

6892. He would be corrected in his view of the law by the Legal Commissioner, would he not?—Oh, yes.

Mr. *Brodrick*—continued.

6893. Now with regard to pre-emption, would you feel it right to confine the right of pre-emption to cases where the landlord actually wished at the moment to get his land into his own hand?—I think it might very often be used in a very advantageous way by a landlord ; that is to prevent the tenant from giving any enormous price, and perhaps spending all his capital on a fictitious value.

6894. Parliament has interfered to prevent the landlord getting the competition rent, on the ground of the agricultural advantage it would be that a fair rent should be fixed ; do you think the same rule applies to fixing competition tenant-right, that you should not allow the tenants to get a competition tenant-right?—I think the same rule fairly applies ; I do not see why it should not.

6895. Not taking one man or another, but looking to the general position of agriculture, I presume that the less a tenant has to pay for coming into a farm beyond what he pays for the improvements found there the better?—There is no use in protecting the occupier against a very high rent, unless you protect him also from paying a very high sum on coming into the farm.

6896. Was there any restriction in the Act upon the number of years' purchase to be given for the tenant-right?—Oh, not the least.

6897. Was there any restriction in the number of years' purchase of the tenant-right which could be given in Ulster on some estates before the Act?—Oh, yes ; there were all sorts of restrictions ; for instance, it has been held to be a usage within the meaning of the Ulster custom to give only the value of improvements. That was held on the Brooke Estate.

Mr. *T. W. Russell.*

6898. Were you ever in Ulster?—I was.

Mr. *Sexton.*

6899. On what estate?—On the Brooke Estate (the late Sir Victor Brooke) in Fermanagh. I forget the name of the case ; it is a reported case.

Mr. *Brodrick.*

6900. Is it not the fact that in the south of Ireland the only check that the landlord has on the in-coming tenant as regards the number of years' purchase which may be given is by fixing the specified value?—That is so.

6901. And if that were done away with, the landlord would have no choice, would he, as to what tenant came in and what he paid?—He has a choice as to the tenant, if he can show that he has a reasonable objection to accept the purchaser of the tenant on the ground of insolvency or something of that sort.

6902. Is not that a very difficult objection to sustain?—Very difficult ; very few objections of that sort have been sustained.

6903. Then your feeling is that the right of pre-emption ought to be preserved?—I think it is only fair. Except as to the value of tenants' improvements the landlord is really buying back something he has already given to the tenancy—

the

Mr. *Brodrick*—continued.

the occupation. When I said that no principles had been laid down about specified value, I ought to have mentioned one case in which the late Judge O'Hagan expressed the opinion that it meant only the value of the improvements; but that has never been acted upon in practice.

6904. Do you think it would be an advantage if some law were laid down as a guide to you in arriving at specified value?—I think it would be a great convenience to the Sub-Commissioners; they would all welcome it.

6905. In reality, Parliament having given you words as to the rent, Parliament ought to have guided you also to some extent in fixing a specified value?—There is not much guidance as to the rent. I think both are left pretty much alike. "Fair rent" and "free value," I suppose, mean pretty much about the same thing, if they mean anything.

6906. Has your Commission ever declined to fix the specified value?—No; I have always taken the view that we were as much bound to fix specified value as judicial rent. The words in the Act are the same: the Court "may" do so, which has always been held to mean that the Court has jurisdiction and ought to exercise it. We have numerous cases in which there is no evidence as to fair rent; the parties come and say that they have no evidence to give, and leave it to the Commissioners.

6907. You have no data to go upon, practically?—We have no data to go upon very often in the rent, and very often in the specified value.

6908. Are you guided at all by what is going on on neighbouring farms, or on neighbouring estates?—Yes; we are, to some extent.

6909. I presume the Commissioners cannot keep out of view what prices are given?—No, not altogether; but, of course, we very often get evidence of very extravagant prices that have been given for other holdings of the same description as the one we are dealing with; but we do not follow that exactly.

6910. If you hear that a very high rent has been given for a sub-letting in the neighbourhood, and that comes before you, does that affect you at all?—No; as a rule, we do not let them give evidence of that sort, we exclude it on the ground that it is irrelevant.

6911. I asked you a question or two last time you were here about town parks, and you I think stated your opinion that you had never known a case of a really *bonâ fide* town park excluded. Would not the abolition of town parks, or a contraction of town parks, very much hinder the development of certain towns?—Do you mean the development as to building? I do not think that applies to most towns in Ireland, except perhaps in the north; they are rather contracting than expanding there, I think, and of course it would interfere very much with the accommodation of the inhabitants of the town.

6912. Do you know any towns in Ireland (in the south) in which the population is going up?—I do not think so; I cannot remember any.

6913. I could take you to one. What is your view about the sales of tenants' interests generally; do you find that the prices are rising or falling?—Well, where I sat lately I had evidence of some very high prices, higher than any I ever heard of before; on the other hand, I know that in some parts of the country it is more difficult to sell large farms on account of the fall in prices. Of course the small farms bring very high prices.

6914. Is not that owing to the absence of capital also? When you come to buy large farms, you require large capital?—Yes, there are more people of small capital than of large, of course, and it requires less capital for small farms.

6915. Would you consider 10 or 15 years' purchase a very high price to be given in the south of Ireland at present?—Much higher prices than those are given. I had evidence lately, I think in Queen's County, of sales of small bits of land, without houses and with no improvements, where the prices were very much higher, 20, 30 and I think 40 years' purchase.

6916. Are you influenced in your fixing of rent by the increases of prices for tenant-right which have been given, and which are brought before you, such as the 30 or 40 years' purchase of which you have just spoken?—Oh, no; not at all.

6917. Do you ask about them?—I do not ask, but they are generally brought out on cross-examination or on examination-in-chief by the solicitors on one side or the other.

6918. Are you guided at all by the Poor Law valuation?—No, not in the least.

6919. You do not attach much importance to it?—No, not as a standard for fixing rent. It is a very good valuation, I think; it is a wonderfully good valuation in its way; that is to say if you take a farm in a district and compare the Poor Law valuation of that farm with that of other farms around of the same sort, you will find they are wonderfully even, I think; but it is no test upon which to fix rent; tillage land is valued too high according to present circumstances, and good grass land is valued too low.

6920. Speaking generally, do you consider that, as you now administer the Acts, they enable you upon the whole to do substantial justice in fixing rents?—Yes; of course I think there are some things that ought to be amended, but I think on the whole there is substantial justice done.

6921. What do you think as to the length of the judicial term?—My own opinion is that it ought not to be shortened. I think it would be a great misfortune to have the country upset every seven years by fixing new rents and having people preparing to go into Court by deteriorating their farms, as certainly would be done in many cases.

6922. Even if you shorten the judicial term, I suppose you must still fix rents at a rate which will be high in one year compared with what they will be in another, owing to the fluctuation of prices?—Yes. Of course, 15 years is long if you are to assume that there will always be very violent changes up or down.

6923. Have the Sub-Commission you have been working with been fixing lower rents, do you

Mr. *Brodrick*—continued.

you think, the last three or four years than when you were originally appointed?—Yes, I think they have. It is very hard to tell that, but I think they are lower now than they were formerly. It is really very hard to tell without seeing the land and going over the cases. I could not undertake to say that.

6924. Do you share the opinion which has been expressed by one or two witnesses with regard to agreements out of Court? Do you think that agreements out of Court, as a rule, are made on a fair basis, or do you believe there is any compulsion on the part of the landlords?—That I do not know. I have had several of these cases before me, and we have nearly always reduced the rents still further. Then, of course, most of these were made in 1882 and 1883. That may account for it.

Mr. *Sexton.*

6925. Have you reduced them much?—In some cases a good deal, in some cases not at all. I could not undertake to say what percentage.

6926. Could you say how high you have made any reduction?—No, I have no idea at all.

Mr. *Brodrick.*

6927. I suppose you would consider it advantageous if, after once fixing the rent, you knew that the fixing, at the end of the judicial term, could largely be done without the intervention of the Commissioners?—Certainly.

6928. Do you think it necessary that these agreements should come before the Court after they are made, or simply be ratified without coming before the Court?—What agreements do you mean?

6929. The agreements made outside the Court?—Oh, no, I do not think it is necessary. People are very well able to manage their own business, I should think, without coming before the Court.

6930. As a matter of fact, do you find that so many legal questions arise for your consideration now as arose when you were first appointed a legal Sub-Commissioner?—No the greater number of them have been settled one way or the other.

6931. Then, in practice, the system is working more smoothly?—Yes.

Mr. *Fuller.*

6932. When you say that the Acts now are working more smoothly, do you mean by that, that the decisions arrived at by the Courts above are such as to give greater satisfaction in arriving at the fair rents?—No, I mean that the points have been settled, and that there are not so many disputes about legal questions. The law is better understood because points have been raised and decided one way or the other.

6933. Do you consider that those decisions are satisfactory to the tenants who are interested in the matter?—I am sure they are not satisfactory to the tenants that have been beaten; I suppose they are to the tenants that have succeeded.

6934. I am speaking now of the various exclusions from the Acts that keep tenants out of Court; there are certain instances, such as

Mr. *Fuller*—continued.

sub-letting, for instance; do you consider that that is a hardship to the tenants, that they should be kept out of Court?—My own opinion is that there are cases of hardship about sub-letting certainly, which were probably not contemplated by the definition of "tenant," on which these questions turn; I think it hard, for instance, where the sub-letting has existed at the time of making a lease, or making a contract of letting, that that should be held to be a sub-letting without the landlord's consent.

Mr. *Sexton.*

6935. The tenant is held to have only the reversion, is he not?—Yes; I think that is a hard case.

Mr. *T. W. Russell.*

6936. Does not the case of *Nolan* v. *Flannery* govern all that?—Yes. That has never been expressly decided by the Court of Appeal, it must be remembered, and I am not at all sure, until it is decided, that that would be held to be the law.

Mr. *Fuller.*

6937. Then as regards improvements; is it not considered a hardship, or do you consider it at all a hardship, upon tenants that they have to prove the improvements by the evidence of persons that have seen the work done or by the evidence of persons having done it themselves?—Well, improvements differ according to class. Some improvements must be proved, as I have already said; drainage for instance, you cannot tell what is the fact as regards drainage unless someone has seen it done.

6938. Quite so?—Buildings of course you can see.

6939. But you do not take into consideration buildings, I understand?—Oh, yes.

6940. Those are not taken into consideration in the fair rent, are they?—Yes; if the tenant does not establish his claim to be exempted from rent in respect of the buildings, rent has to be put upon him in respect of them.

6941. I will come to that point afterwards. We are on the question of principle. Take, for instance, drainage; is it difficult, on the part of the tenants, to get evidence to satisfy the Court upon that point?—No, I do not think it is generally difficult. It is not difficult to satisfy the Court that drains have been done; but really as to proving the exact quantity of drainage, that must be only a matter of guess-work to a large extent, I think.

6942. Drainage, is that a matter of guess-work?—Very much; it is impossible to say how deep the drains are, or how far apart they are.

6943. Is it difficult to arrive at the improvability of the land in consequence of the drainage?—I should say not very difficult. You generally have the adjoining land to guide you.

6944. And in the case of land being improved by drainage we have had evidence before that the capital sum laid out in drainage is remitted, by way of interest, to the tenant, and any improvement in the letting value of the land goes

to

Mr. *Fuller*—continued.

to the benefit of the landlord?—As I have said, the case hardly arises. When you give the tenant a fair allowance by way of percentage, there is very little, I think, after that; nothing, in most cases. The question really does not arise practically; as to drainage it does not arise. There may be cases of reclamation in which it does arise; that is a different consideration.

6945. Then as regards fences; are they taken into consideration?—Very little one way or the other; the fences are very poor things as a general rule. A tenant generally proves that he has thrown down a great number of hundreds of perches of fences and generally that about the same number of hundreds of perches have been put up. Many of them do not add much to the letting value. Every new tenant makes a different disposition of the fences.

6946. You do not take the tenant's view of the value of fences, do you?—We do not consider that the sort of fence that is there adds very much to, or takes very much from, the value. One man pulls them down; another man puts them up.

6947. The presumption of law is, is it not, that landlords do all the repairs; is not that so?—The presumption of law?

6948. Yes?—Oh, no. Repairs of buildings, do you mean?

6949. Yes?—Oh, no, not in Ireland.

6950. What I mean is this: the tenant has to show his improvements, the buildings and so forth, and if he cannot show them, then the buildings and so forth are thrown into the general value of the land, is it not so?—First of all, there is a presumption that all the improvements are made by the tenant, if he is a yearly tenant.

6951. Then in testing the value of the land, how far would the value of buildings add to the letting value of the land?—That is not the way that holdings are valued in Ireland. Almost the universal way in which the valuing is done, is, to value the land as if there were no buildings, and then, if there is rent to be put on the buildings, add the rent for the buildings in addition to the value of the land.

6952. Do you think that a satisfactory way of doing it?—I do in Ireland, where the buildings are generally built by the tenant. It would be useless to include the buildings, when in nine cases out of ten you would have to deduct the buildings again in order to arrive at a fair rent. We do not put any rent upon the buildings.

6953. Land cannot be of any value without buildings?—Some of the most valuable farms in Ireland have no buildings on them. Some farms in Ireland have buildings, and the tenants would much prefer that they had not, because they have to pay rates and taxes upon them. All the grass lands have no buildings, except, of course, the herd's house, which is generally valued at about 10*s*.

6954. Is that the most valuable land that you are speaking of?—By far the most; the valuable grazing lands of Meath have no houses except the herds' houses.

Mr. *Fuller*—continued.

6955. Are the cattle, then, not shedded at all all the year round?—Not at all.

6956. Then there is no hardship in that as regards the tenant; the buildings are not considered in the valuing of the fair rent?—No, except in those cases in which, as I have said, the tenant has to pay a rent on buildings which have been built by him; those cases have occurred.

6957. In cases where you have small holdings of a few acres, say ten acres?—In those cases the landlord never claims on buildings. Everybody knows they are built by the tenant. The first question asked in those cases generally is, or indeed, in all cases: "Does the landlord claim the buildings," in Court I mean. The landlord nearly always says he does not.

6958. The tenant has made them?—Yes.

6959. The quantity of land is valued by the Court valuer?—Yes.

6960. Now, as a matter of fact, would not those buildings and sheds add enormously to the value of a piece of tilled land close by?—Well, I do not think they would, most of them.

6961. How could you keep cattle, or how could you get your manure; how could the man live so as to cultivate the ground, if there was no house on the holding?—Well, the whole of the buildings in those cases have not cost, I suppose, more than ten or fifteen pounds; that would be a liberal estimate.

6962. On a farm of 40 or 50 acres?—Oh, no; you said "10 acres."

Mr. *Sexton.*

6963. When you say that holdings are as valuable without buildings, you are speaking simply of pastoral holdings?—Yes.

Mr. *Fuller.*

6964. I am trying to get at the villages. I only know that there are such cases of nine or ten acres of cultivated arable land, enclosed, and with a very decent house upon it, sheds for cattle, and so forth. What I want to ask is this: in valuing the land is there no consideration taken on the part of the valuer of how far these buildings and sheds have contributed to the value of the land?—None whatever; we leave them out of account altogether unless we should value them, and put the rent on them for the landlord.

6965. Suppose the land to be, in its appearance to the valuer, worth 2*l*. an acre to the landlord, and the landlord built those buildings, and provided all the appurtenances of the farm, how would he adjust that 2*l*. an acre?—The difference between the landlord making the buildings and the tenant making the buildings is this: as I have said, in Ireland, that is not the practice in valuing; in England it is; in Ireland it is different; in Ireland the land is valued on the assumption that the landlord gives the tenant the land only with permission to build the buildings on it. In England, now, you value the whole thing together, land and buildings.

6966. Then it seems to me that the tenant-right is the right to live upon the land, is that so?—Yes, with the right to build a house and live there.

Mr. *Fuller*—continued.

6967. And if he brings the land up in value to 2*l.*, or 3*l.*, or 4*l.* an acre, that is in consequence of his living upon the land, and he is rented upon that value independent of anything he has contributed towards it by way of buildings?—I do not think he adds anything to the land by living on it; he generally takes a good deal out of the land.

6968. He cannot take anything out of the land, which is prairie land, as it were?—But there has not been any prairie land in Ireland for long centuries. I do not know what the condition of Ireland was when in prairie; I should think a great deal of it was much better than it is now, because then it was not exhausted.

6969. I have a recollection of seeing a plot of land of four, five, or six acres on the side of a mountain at Achill. Buildings on that land were done by the tenant, and I want to know in a wide expense of heather and bog land of that sort how the valuer would distinguish between the landlord's interest in the land and the tenant's interest in the land, considering that the tenant had done everything in that respect, to bring that land up, by cultivation, to the value of a pound an acre?—The valuer would allow the tenant what he thought a fair thing for his reclamation of the land.

6970. But this is a case where land was reclaimed, perhaps, 70 or 80 years ago; is not that taken into consideration?—I must inquire into the circumstances of the particular case. I cannot roughly answer a question about cases that I have not seen.

6971. The law does not assist in that way?—No. For all that I know there might have been an arrangement between the landlord and the tenant that the latter would not have to pay any rent for 40 or 50 years perhaps.

6972. So far as the law is concerned, the tenant would pay rent upon his improvement in that particular instance, would he not?—Certainly not; if he proved that he, or his predecessor, had made the reclamation; that is the law.

6973. That is the difficulty; suppose he cannot prove it?—If he cannot prove it, he must pay.

6974. If he did not prove it, then he would have to pay the rent upon it?—Yes.

6975. That is a point I rather want to arrive at; the difficulty of proving?—It is subject, of course, to the presumption that the improvements are made by the tenant.

6976. Or the landlord?—No, the presumption is, that everything is done by the tenant, if he is a tenant from year to year.

Mr. *T. W. Russell.*

6977. That is all under 10*l.* valuation, is it not?—Oh, no, the valuation has nothing to do with it; there is a general presumption that the improvements are made by the tenant.

6978. Do you tell the Committee that the presumption at the present moment is in favour of the tenant?—Certainly.

Mr. *Sexton.*

6979. Is it not the fact that where any improvements were made 20 years or upwards before the passing of the Act of 1870, there is no presumption on behalf of the tenant?—Quite so.

6980. All improvements before 1850 have to be proved?—Yes.

Mr. *Fuller.*

6981. Do you think that the exclusion is any detriment to the tenants who occupy land as town parks?—Of course they would like to get the land at a lower rent, but that is a question of policy. Introducing town parks into the Act, is introducing a totally new class of tenancies; that is, men who do not live by farming.

6982. Would it injure landlords if care was taken to reserve their rights of building upon it, and so forth?—It certainly would if their rents were reduced, as no doubt they would be.

6983. You have reason to suppose that the rents are not unnecessarily high?—No; I think they are agreed to by men who are perfectly familiar with farming as a means of living.

6984. If they are fair rents, I suppose the Court would fix them as fair rents?—I would not presume that.

6985. Do not you think so as a general rule?—As a general rule the Court would know nothing about accommodation value of lands near a town. Most of them have no experience of it.

6986. Do you think in that case according to their character the rent is an unfair rent?—I do.

6987. Too high?—Too low in town parks.

6988. Too low?—Yes.

6989. Then as regards fee farm grants; I understand that there all improvements are rented?—That is so.

6990. Do you think that is fair?—No; I think that is a thing that ought to be amended; I think it is a thing that was not foreseen by the Act of 1881 or the Redemption of Rent Act. It could not have been foreseen.

6991. Have the landlords, do you think, any complaint to make against the laws as they are now administered?—I do not know that; but they do make complaints.

6992. In what way?—They say in many cases that the rents are too low, for instance.

6993. All they want is a fair rent, I suppose?—They want what they think the fair rent; they do not want what we very often think the fair rent.

6994. As between buyer and seller, there is always a difference of opinion?—Quite so.

6995. The Court is set up for the purpose of making fair rents?—Quite so.

6996. Assuming that the landlord is a reasonable person, has he any reason to complain of the rents fixed by the Court?—I do not know whether he has anything to complain of; I know that landlords very often do complain.

6997. In your opinion, have they anything to complain of?—I cannot express an opinion upon that.

6998. Can you suggest any variation in the system of valuing for a fair rent?—No; I do not think anything is practically possible.

6999. Did

Mr. *M'Cartan.*

6999. Did I gather the impression aright from you when I understood you to say that the presumption is that all the improvements are made by the tenant?—Yes, in tenancies from year to year, subject of course to the exceptions to that afterwards.

7000. You have had a very long and large experience on the Land Commission?—Yes.

7001. Throughout all that experience, in what number of cases were the improvements presumed to be the tenant's without actual proof of their being made by the tenant, or by some witness on his behalf?—In every case with which I have had to deal, about buildings for instance, if it is a tenancy from year to year there it is presumed in favour of the tenant; it lies on the landlord to prove the contrary.

7002. Take drainage?—Drainage cannot be dealt with in that way. As I have explained before, drainage is a thing you cannot see; when you go into a field you cannot see whether it is drained or whether it is not. I know land which has been drained for a number of years, and no person could tell now whether it had been drained or not.

7003. If no person can tell now whether it has been drained, do you consider it an improvement?—Decidedly it may be an improvement.

7004. When you could not see the drains?—What I mean is where the drains are covered up; but you can see the water running possibly, but you do not know from how many drains it is coming; it may be from half the field, or it may be from the whole, or from only a smaller part.

7005. Do you mean to tell me that an expert would not know whether there were good working drains there by looking at them?—They are covered up.

7006. Undoubtedly, but there is the outlet?—Yes; as I say, he could see water running from them, but that would not tell him anything as to the quantity of the drains.

7007. Is it not by that outlet that he can judge of the value they add to the farm?—No, certainly not; he cannot.

7008. What value does he put upon the drains at all?—He must take the word of someone who can tell him how much drainage he knew was made, where the drains are, and how far apart, whoever supports the claim for drains in Court. I ask these questions, otherwise it is impossible to make any estimate of the value of the drainage.

7009. From previous witnesses I understood that the object of going on to the farm was to see——?—To see as much as could be seen.

7010. To see what improvements existed, and whether the improvements proved in Court did exist there or not?—That is one of the improvements that cannot be proved with exactitude.

7011. Then the Commissioner gives the tenant credit for what he swears the drainage is worth without observing it himself?—I do not say that; I think he gives the tenant credit; he estimates from the evidence and what he sees how much it is worth, and gives credit for that; but I think very often it is a very vague guess.

7012. And if he saw the drains upon the farm would not that assist him?—But they are not

Mr. *M'Cartan*—continued.

open, and that is the difficulty; they are covered up.

7013. But there are open drains?—Now, you are coming to a different class of drains; he sees the different improvements.

7014. The different class of drains; let us go to the open one. Do you say as to the open drains that the tenant is not bound to prove the making of them in Court?—He is bound to prove making all of them in Court.

7015. If he is bound to prove the making of them in Court, where then is the presumption that they belong to the tenant?—Well, no, I do not think he is bound to prove them, unless there is a preliminary answer which leads to the belief that they were made beyond the period for which the presumption exists.

7016. I should like you to be clear upon that, because your evidence is not consistent with the evidence given by any other Commissioner upon that point. You say he would not be bound to prove?—I think not, unless, as I say, somebody proved that they were there at a time when the presumption ceased to run.

7017. What has been your practice in these cases?—What class of case?

7018. Take the case of open drains of which the tenant is obliged to state the number of perches on the back of his notice; what do you require the tenant to do when he comes into Court?—The general thing is that somebody measures the drains, says they are there, and in nearly all cases he says he has made them.

7019. And in nearly all the cases he says he has made them?—Yes.

7020. Suppose he does not say that?—If he cannot, or if sombebody else does not, he is always cross-examined to know how long they have been there.

7021. So that in cases where the tenant fails to make proof of the making of the drains by himself or his predecessor, then he is always asked how long they have been there, is that it?—Generally.

7022. But suppose that he cannot prove that they were made by himself at all, or his predecessor, what do you do in that case?—That throws back the making of the drains to such a time that the presumption ceases to be in favour of the tenant, and he is not allowed for them.

Mr. *T. W. Russell.*

7023. You have been describing proof, not presumption?—You must take both together, presumption and proof.

Mr. *M'Cartan.*

7024. I will give you a very common case, a case where the farmer himself dies and leaves a wife and young family, where the wife or family cannot prove the actual making of the drains though they know they were made; what do you do in a case of that sort?—I think in all cases of that sort that I have seen, the tenant, if not able to prove them, inasmuch as the possible necessity is pointed out, gets a witness, and generally has the witness ready.

7025. Suppose he could not get the witness?—The next-door neighbour very often knows

Mr. *M'Cartan*—continued.

they were made there but did not see them made, because they are made from day to day and from year to year; in that case what would you do suppose you could get no actual proof that the drains were made by the tenant or his predecessor, what is your practice under those circumstances?—I say unless the landlord gave some proof that they were made before the period at which the presumption ceases, we should say the presumption was that they were made by the tenant.

Mr. *T. W. Russell.*

7026. What is the use of going into all the evidence if you would say that?—Into what evidence?

7027. My point is this: you have just described to Mr. M'Cartan what takes place in a Sub-Commission Court when a question of open drains arises?—Yes.

7028. If the widow or the children are not able to prove them, you tell us that they generally get a witness to prove them?—If the necessity arises.

7029. If the necessity arises?—That is, if the landlord gives any evidence to lead us to suppose that they have been made upwards of 40 years the time when the presumption ceases.

7030. I submit that that is not the case Mr. M'Cartan put. He put the ordinary case that I have described, and you then told us that the presumption in this case was in favour of the tenant; you have been telling us for the last ten minutes that you require proof, and what I want to know is, if proof is required where does the presumption lie?—I do not think we do require proof, because we assume that they are made by the tenant if they are there.

7031. What do you want the widow's witness for then?—She nearly always produces a witness in order to rebut the presumption that they are made more than 24 years ago.

Mr. *Dillon.*

7032. Is there a "presumption"?—The presumption ceases if they have been made 44 years.

Mr. *Sexton.*

7033. That is 44 years ago, not 24?—In the case of drains it refers to the passing of the Act of 1870, 20 years before that time I should say.

Mr. *T. W. Russell.*

7034. That is 1850?—That is 1850. As a matter of fact, the procedure is that the tenant nearly always produces evidence to show who made the drains and when they were made.

Mr. *M'Cartan.*

7035. I have known myself hundreds of cases, and that is why I ask these questions: Do I understand that in the case where the tenant is dead, or in another very common case where the tenant is the purchaser of a farm, and the late tenant has gone abroad, or something of that kind, in such a case as that, and where the tenant has not it in his power to prove the making of the drain, or of the improvements, what is your

Mr. *M'Cartan*—continued.

ordinary practice, because it must be a very common case?—Well, a thing like open drains that are visible, I should say that in that case the tenant is allowed for them.

7036. In the case of closed drains, what is your practice?—That requires somebody to prove that they have been made, because they cannot be seen when you go on the land.

7037. If the presumption is in favour of open drains, why is it not in favour of the closed drains?—Because the open drains are visible, while the existence of the closed drains cannot be known without the evidence of some one who has either made them or seen them made.

7038. Cannot the expert who goes on the farm, seeing these drains running, form some estimate of the value of those drains to the farm?—Not the least, I assure you; because he cannot guess approximately what quantity of land is drained, or what number of perches of drains there are there; it is true he sees the outlet, but that may be the outlet from one perch or from 500 perches of drains.

7039. Then do I understand that in a case like that, if the tenant claimed 500 perches of drains, and you only saw the outlet, he would get credit for the 500 perches of drains, although there might be only 50 perches in it?—The Sub-Commissioners would see the land and they would form the best estimate they could about whether he was telling the truth or not.

7040. So that it is arrived at in part from their observation on the farm?—It is partly on observation and partly on what is sworn.

7041. You go this length, at all events, you say that in all cases your practice has been to presume in favour of the tenant as to improvements?—In the case of visible improvements.

7042. Now take reclamation; it may or may not be a visible improvement?—Quite so; in a very old reclamation it must be a visible improvement.

7043. In the case of reclamation what would you do; would you require to know by whom the reclamation had been made?—Well, I think so; yes.

7044. So that in a case of reclamation you would require strict proof, in justice to the landlord, as to the making of the improvements?—I think it would be necessary in order to estimate the value of the reclamation, and so on.

7045. So that in order to estimate the value of the reclamation you require strict proof that it was made by the tenant, or by some person who saw it making?—Yes.

7046. Have you had experience in Ulster on this question of improvements?—I was in Monaghan alone.

7047. Was the practice in Monaghan just the same as in all other parts; that all the improvements the tenant claimed were presumed to be his without proof?—Well, buildings certainly were. In other cases, I think, the tenant, without any question, generally gave evidence of the making of the improvements; that is my recollection.

7048. As a matter of fact, is not the tenant, the moment he is put into the box, put on his proof as to the improvements scheduled on the

back

Mr. *M'Cartan*—continued.

back of his notice?—Yes, that is the general course, except, as I say, in the case of buildings, if it is a tenancy from year to year, there is the presumption.

7049. Has not he put the buildings on the back of the notice also?—Yes, on the schedule he gives notice of his claim, but the proof of this claim would merely rely on the presumption.

7050. As to other items not scheduled on the back of the notice there is his sworn testimony?—Yes.

7051. And after that sworn testimony I presume they are presumed to belong to him, after he proves them?—Yes, but you must remember, as I have said again and again, the drains are not visible, and unless somebody says he saw them being made you cannot tell they are there.

Mr. *M'Cartan*—continued.

You cannot tell that stones have been rooted up out of a field unless somebody says that it has been done; they are gone.

7052. There are two very different questions there, one as to whether the improvements were made, the other by whom they were made?—You cannot possibly separate the two. No man can swear that they were made unless he is in a position to swear that he saw them made.

7053. Is it not possible that in many cases you could have a witness who, 20 years ago, saw the land in its unreclaimed state, but could not prove anything at all as to who was the person who reclaimed it?—Certainly; I should consider that very good evidence that the tenant in occupation reclaimed it.

7054. And you would presume that?—Decidedly.

Tuesday, 3rd July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
The Solicitor General.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. LAURENCE DOYLE, again called in; and further Examined.

Mr. *M'Cartan.*

7055. I JUST want to ask you about a case in which I think you gave a decision. Do you remember a case of Mrs. Supple, tenant, and Archibald, landlord? It was heard in November last at Ballyglass?—I do not remember it by name.

7056. I will just tell you the facts; perhaps you will then remember it. On Mrs. Supple's death there was a considerable amount of arrears due to the landlord; the rent had been 52*l.*, and in consideration of Mrs. Supple undertaking to pay the arrears it was reduced to 30*l.*; she had 30*l.* rent, and she paid the arrears; then there was a demand made to have the rent restored to the old rent, 52*l.* She served notice and came before your court?—I do not remember the case now.

7057. The rent was fixed at 42*l.* 10*s.*, and there was an appeal by the tenant. The court valuer valued it at 35*l.* 10*s.*, and the Chief Commissioner fixed it at 36*l.* You have no recollection of that?—Not the slightest.

7058. Then I cannot ask you any question about it?—Of course I could easily find my note of it.

7059. In one of your answers on the last day you told the Committee that you thought the town-parks were let too cheap?—No, I did not say that, I think.

Mr. *Sexton.*

7060. It was ambiguous. I think what you meant to convey was that agricultural rents for them would be too low, was it not?—Perhaps so.

Mr. *M'Cartan.*

7061. In Question 6986 you were asked: "Do you think in that case, according to their character, the rent is an unfair rent?" and you answered, "I do." Mr. Fuller put the question to you, "Do you think in that case, according to their character" (that is the accommodation value), "the rent is an unfair rent. (*A.*) I do. (*Q.*) Too high"; and you say, "Too low in town-parks"?—Will you kindly read the question before that, because it evidently refers to something before. I think that Mr. Fuller asked me to say whether I thought the Sub-Commissioners would fix fair rents on town-parks, having regard to the accommodation value; and my answer was, or what I intended to say was, that I thought not, because I thought they would not take into account the accommodation value, but that they would fix the rents on the basis of their being agricultural holdings with proximity value.

7062. Why do you think they would not take into account everything they ought?—Because I think most of them do not know what the value of accommodation land near a town is; they have had no opportunity of being practically acquainted with it; they are farmers.

7063. Can you tell the Committee what you believe would be the effect in the case of a tenant who has now got a rent fixed and who failed for want of witnesses to prove all the improvements that he was then entitled to; would there be a stop upon him in coming into court again?—That is a question of law; and I should prefer not to answer until it comes up for decision. I think it is a very serious question how far the fixing of the judicial rents will affect this question in the future.

7064. For example, suppose the tenant had not got the improvements all put on the back of his notice, would he be stopped from going into proof of them?—I should prefer not to give any answer to that until it comes up for decision,

7065. Do you consider it is a serious position?—I do.

Mr. *Sexton.*

7066. Do you hold any land as a tenant?—I do.

7067. Where?

Mr. *Sexton*—continued.

7067. Where?—In the county of Wexford.

7068. From year to year?—No, under lease.

7069. Have you had a fair rent fixed?—No.

7070. Do you hold any land as landlord?—Yes.

7071. Where?—In county Wexford also.

7072. Have you many tenants?—I have some tenants; a few.

7073. On what tenure?—Some leasehold; some from year to year.

7074. Have they gone into court?—No.

7075. None of them?—No.

7076. Have you read Mr. Bailey's paper showing the exclusions from the fair rent provisions?—No, I have not.

7077. You heard his evidence?—Yes.

7078. Taking his paper as a summary of his evidence, do you say that he gave an accurate account of the law as developed by the tribunals?—I think he did, generally. I should not like to commit myself to every statement in his evidence without reconsidering it, but I think it was generally accurate.

7079. Does any matter occur to your mind on which it was, as a summary, inaccurate?—No.

7080. So far as you know at present the summary is accurate?—I think so.

7081. And any exclusions on these four pages may turn up as a matter of law in any case, although you say that some of them have not come within your own experience?—Yes.

7082. Still they may turn up at any time?—Yes; I presume so.

7083. I understand that you do not approve of the shortening of the statutory term?—No, I do not.

7084. Agriculture in Ireland is subject, is it not, to frequent fluctuations?—Yes, but not more than in any other country I should think. Latterly it has been subject to fluctuations.

7085. I suggest to you that it is, more than in most other countries, in respect to harvests and yields?—I am not aware that it is.

7086. Have we not had successions of bad years in Ireland very frequently?—Yes, and in England too.

7087. Would you say to the same extent?—Well, I think so.

7088. At any rate we have had successions of bad years; for instance, from 1878 to 1880?—Yes; from 1878 to the present there have not been many really good years, either in England or in Ireland, I think.

7089. But I think there were several previous to 1878, and again after 1885?—Yes; I mean as to harvests, there were bad harvests.

7090. Yes, "bad years," as they are called in Ireland?—Well, of course in Ireland it is the goodness or the badness of times with regard to cattle that people regard more than harvests.

7091. They regard the cattle more, do they not?—Yes, the cattle are far the most important in that country.

7092. Then also there are, as we know, frequent fluctuations in price?—Yes.

7093. The prices that prevailed from the passing of the Land Act up to 1885 were very

Mr. *Sexton*—continued.

different from those that ruled in the years after 1886, were they not?—There were some very low prices before 1885; on the whole, they have been lower since, considerably; especially for inferior cattle.

7094. They fell very heavily in the years after 1886, did they not?—Well, I think the fall began about the autumn of 1884.

7095. It began to be felt on your rents in 1887?—Yes, probably.

7096. I suppose you have observed the evidence of Mr. Commissioner Fitzgerald that the reductions in 1887 were nearly double what they had been in 1885; that is to say, they had been 18 per cent. in the former year, and 31 per cent. in the latter?—Yes; and I think there was another reason beside the fall of prices, in 1887 particularly; 1887 was a dry year, and I think a great deal of land was valued lower on account of the very bad appearance it presented.

7097. It was a question of another sort affecting rent?—Yes, but affecting it only for one year.

7098. Is it a fact, as I hear, that in Ireland, where contract is free, it is difficult now in some cases to get more than half or about half the rent that could have been got about 1882?—What, in new lettings?

7099. Yes?—I have never heard that.

7100. Taking free contract in 1882 and 1883, where it existed, is it not a fact that a man would not be willing to give much more than half the rent now?—I have never heard that.

7101. You think the rent given now would be substantially lower where the contract was free than the rent given about 1882?—Yes, I think it would. I beg your pardon, "lower than 1882"?

7102. Or that period?—The great change occurred in 1879, and the change was more or less permanent in 1880 and 1881; but I think the rent would be very much lower now than it would have been in 1875 and 1876.

7103. But, generally speaking, is not this the state of affairs: that in the last 15 years there appears to have been a heavy fall in the years of great disaster, 1879 to 1881; that prices then improved considerably up to 1884; that then, again, there was a heavy depression, lasting for some years further, and that market prices and the value of agricultural land are lower now than they were in the six years succeeding the Land Act?—Yes, I think so.

7104. You know, of course, that it became necessary about some six years after the passing of the Land Act that the Legislature should interfere to save the tenants by adjusting rents fixed in the previous six years?—Yes.

7105. Now looking to all that varying experience at nearly the end of the period of 15 years, does it not occur to you that a statutory term of 15 years fits itself rather badly to the exigencies of Irish agriculture?—If we were to assume that there would be in the next 15 years the same amount of fluctuation; it may be that the term would be too long, but I do not think that is probable; things have fallen low, and I

Mr. *Sexton*—continued.

do not think there is much sign of their going lower.

7106. I believe Mr. O'Keeffe is an agricultural expert?—Yes, and a very good one.

7107. A very good one, and a good chemist?—Yes.

7108. We heard from him that there is a definite downward tendency still in prices?—In corn there is, of course; we all know that in wheat there is; I suppose everybody knows it. In good cattle I do not know that there is; for instance, I have heard that the letting of grass in Meath this year is better than it has been for a couple of years.

7109. But there is rather a general downward tendency; would you differ from Mr. O'Keeffe about that; would you say there is an upward tendency, or that the tendency is even?—I think it is pretty even now and has been for some time; I do not see much difference, in good things especially.

7110. Now, the continuing of the present statutory rent would depend, would it not, in some measure upon the correctness of the forecast made by a valuer as to the statutory term?—No doubt.

7111. Do you look back upon past prices and fluctuations, and from those do you attempt to gauge the future in fixing your rent?—Yes.

7112. Taking the experience of the last 15 years to be such as you say, and assuming that it may repeat itself two or three times in the next 15 years, would not the fluctuations both in yield and price seriously affect the capacity of the tenant to pay the rent?—That is so. On the other hand you must put the disadvantages of shortening the term.

7113. At present I should like to confine myself to the advantages?—There is no doubt that would be so.

7114. You would not commit yourself to any formula as to the proportion between rent and gross produce; we sometimes hear the formula that a man must make "three or four rents"?—That differs altogether on different sorts of land.

7115. I know that, but on ordinary agricultural holdings it is said that he must make "three or four rents"?—I do not think you would ever get people to agree what the proportion should be; you would have to fix it on each individual holding according to the circumstances, so that it would be impossible to carry out any system of that kind. The easiest way to apportion it is to take a good dairy farm; people arrived there at a pretty general idea as to the proportion that ought to be paid for rent.

7116. Do not you think it would be a safe thing to limit the prophetic powers of the valuer as much as possible; he would be more likely to prophesy soundly for seven than for 15 years, would he not?—Yes, I presume he would.

7117. And even if he went astray, it would not so much matter, would it?—No, it would not.

7118. Of course, in speaking of fluctuations, I am speaking of fluctuations up as well as down?—Yes, of course.

7119. The interests of the landlord may be affected?—Certainly.

Mr. *Sexton*—continued.

7120. I think you suggested that a short statutory term would upset the country?—Yes, I think it would have very much the effect of keeping the people occupied in their fair-rent cases instead of minding their business, and in neglecting their farms purposely in order to prepare for the next hearing of their cases, so as not to have the farm in too good a condition when valued.

7121. Do you suggest that tenants in Ireland, if you had a short statutory term, would wilfully deteriorate the farm in order to deceive you as to the value of it?—I think a great many would.

7122. The evidence here is uniformly to the effect that the valuers take very good care not to allow wilful deterioration on the part of the tenant to lower the amount of the rent?—It is not quite uniform, because, as I said when I was examined here the first day, whatever any valuers may intend, they are influenced by what they see, and if the farm is deteriorated, no matter what they intend to do, they will, as a matter of fact, put the rent low.

7123. The fixing of a rent upon this elaborate pink report is a very complicated operation?—It is not more complicated than before, except that there is more written down.

7124. Then, although you go through all these forms in fixing the rents, the rent may be much more simply fixed than the form indicates?—I think we went through all the processes that are indicated in that paper without putting them down in writing.

7125. But we know, I think, now by these returns how the rent is fixed?—Yes.

7126. Do you contend that a gentleman capable of competently following this return, and from these numerous factors deducting the fair rent, is incapable of telling what should be the ordinary condition of a farm wilfully deteriorated?—I think very often he is; it is an extremely difficult thing to do.

7127. But when the valuers declare, as I put to you they have declared, that they would not allow wilful deterioration on the part of the tenant to affect their fixing of the rent, do you not think the tenant would consider himself running a dangerous risk if he deteriorated the farm upon the chance of getting a lower rent?—Whatever they might declare, my opinion is, as I have said, that they are affected by the deteriorated state of the farm.

7128. Are they affected similarly when a farm is in exceptionally good condition?—I think so.

7129. It seems strange that a man who can arrive at the value of a piece of land by this system is unable when it is in low or high condition to tell what would be its value in the ordinary condition?—Well, I do not believe in valuing hypothetically to any large extent. I think most valuations consist, to a considerable extent, in valuing what the man has before his eyes. If a farm is in very good condition he can scarcely prevent himself from thinking it better than it ought to be by itself; and, on the other hand, if it is deteriorated, he can scarcely suppose what it would be if it were not deteriorated; that is my opinion.

7130. Other

Mr. *Sexton*—continued.

7130. Other valuers here have felt no doubt of their capacity to do that?—Undoubtedly.

7131. You are conscious of their infirmities?—And of my own.

7132. I may say that I have very little doubt about your capacity to ascertain what would be the ordinary condition of a farm wilfully deteriorated; you say, however, that it upsets the country. Which upsets the country most, would you say; leaving rents, fixed between 1882 and 1885, which are now too high, to be paid for several other years, or reducing them to the level of fair rents?—I do not know, but I know there is a great deal of waste of time and money, which tenants feel very much; I know in some cases they prefer not to go into court on account of that.

7133. But if the option before the man were either to go on paying a high rent for 15 years, or to get it reduced to a fair rent at once (or soon), do not you think he would like to spend a little money in getting the rent reduced?—Yes, if he were sure of getting what he thought a satisfactory reduction; if he was sure the rent would continue too high a rent, or a good deal too high, he might prefer to go into court; but I know that many tenants have great reluctance to go into court.

7134. Reluctance?—Yes.

7135. Why?—On account of the expense; they do not like litigation (a great many tenants in Ireland); strange as it may appear, they prefer to mind their business.

7136. That depends upon what benefit they may expect to derive from that litigation?—Of course; but I know that a great many men, unless they know they will derive a considerable benefit, prefer not to bother with litigation.

7137. Do you think it will tend to tranquility in Ireland if rents fixed at 18 per cent. reduction in 1884, while 31 per cent. was given in 1887, are to go on to the end of the 15 years, whilst materially lower rents are being fixed every day throughout the country?—I think on the whole it is better to let them stand.

7138. What do you think they think then?—I should think they would prefer to have them reduced; if they expect the reduction, they would like some basis (or tribunal) to reduce them.

7139. Then do not the elements of the case entitle them to expect that reduction?—Some would prefer it, perhaps; I do not think they all would; there was very great unevenness in fixing rents in 1882, 1883, and 1884.

7140. We have it that the rents fixed up to 1885 were reduced 18 per cent., and that the reduction was 37 per cent. in 1887?—The rents could not be reduced by any automatic process applied all round to reduction; they would not be even. Everybody seems to have been under the impression that where there was a facility for comparing rents fixed by two Sub-Commissions say of a piece of land on the side of a hill; there was sometimes a difference of 20 per cent. or more between rents fixed by one Sub-Commissioner and those fixed by another Sub-Commissioner.

7141. There is no uniformity?—No; I should

Mr. *Sexton*—continued.

think there was less formerly than there is now.

7142. There are no principles laid down?—No.

7143. It depends upon the judgment and discretion of the individual concerned?—Almost entirely.

7144. So that the results would vary?—Yes, but I think the results are now more uniform than they were at first.

7145. Do you mean that the discretion of individuals has become more uniform?—I think so.

7146. How does that arise?—They have been mixing together more; men have been separated from the people they were originally working with and put to work with other men and so on, and I think a moderate amount of uniformity has been established.

7147. A sort of insensible process of equalisation of discretion?—Yes, I think so.

7148. Assuming existing rents to be too high, as is admitted in regard to those fixed in the early years, do you think it more expedient that these rents should go on to the end of the 15 years, or that they should be made fair according to present circumstances?—Of course that is a matter really that is not easy to make up one's mind about; there are arguments on both sides: my opinion is, on the whole, that it is better for the country to leave them as they are.

7149. At the high rents of the early years rather than get fair rents fixed?—In cases where the rents are very much too high, abatements are being made to a large extent by the landlords, I know, even on judicial rents.

7150. I think you said that fair rent and true value are the same?—No, I did not; I meant the epithets mean about the same thing, "fair" and "true"; at least I do not know any other meaning for them.

7151. Oh, the "epithets"! The "fair rent" is the just annual value of the interest of the landlord?—Yes.

7152. The "true value" is the whole of the just value of the interest of the tenant?—Yes.

7153. You tell us that in fixing the specified value or true value you consider they are the same in different stages?—Yes.

7154. But in this, as in one more important matter, you have no principles laid down?—That is so.

7155. And I think you said you act by "rule of thumb"?—Yes.

7156. Would you make that phrase more intelligible; could you make more clear what you mean?—Very little I am afraid; we fix what we think a reasonable man, not urged by any very great necessity, would give for the tenant-right if it were sold to him by the occupying tenant.

7157. You told us, I think, that you have known 25 or 30 years, and even more, to be given where a tenant-right was sold in the open market?—Yes; to put that in another way we should not think that the true value.

7158. You said, I think, that where there were no improvements you thought about five years of the rent the value of the tenant-right?—That would be low, that would be on a large holding,

Mr. *Sexton*—continued.

perhaps about seven years' purchase; of course on small holdings there generally are buildings; there we should give 10 or 12 years, according to the building.

7159. I turn to the Act of 1881, Section 8, Sub-section 5, where you are directed to fix a specified value; do you find in the Act any direction that the specified value so fixed is to be anything lower than your estimate of what the tenant would get if he sold the land in the open market?—The specified value?

7160. Yes?—No, there is nothing in the Act.

7161. How have you evolved the principle, if I may call it so, that the specified value is to be only a fraction of what he would get in the open market?—There is a decision on the subject; I think in Adams *v.* Dunseath the opinion was expressed in the first place that the true value and specified value are the same thing. "True value" must mean something independently of "competition value." There would not be any object in giving the landlord the right to have it fixed if it were the competition value; he would walk into the auction and bid for it.

7162. The landlord or the tenant may apply to you to fix the specified value?—Well, the tenant never does.

7163. The tenant never does; I should think so; it is always the landlord who applies?—Yes.

7164. But you will observe that the specified value is fixed upon the occasion of fixing a fair rent?—Yes.

7165. There is no opportunity in that process of putting the specified value up to auction?—No; it has been done in some cases.

7166. But it does not occur in the course of fixing the fair rent as a judicial process?—Oh, no.

7167. I suggest to you that you are directed to do that by Section 8, Sub-section 5, in the absence of the public competition which does not occur, of course, in the judicial proceeding on fixing a fair rent, that is to say that you are directed to make an estimate of what the tenant would get if he sold in the open market?—Well, the Land Commission has not taken that view, no more than it has about fixing a fair rent, that it is bound to estimate what the landlord would get if the farm was put up to public competition.

7168. Where shall we find an authoritative view of the Land Commission in regard to the true definition of the term "specified value"?—Nowhere.

7169. Nowhere?—I think not; if you mean the principles on which it should be fixed, I think nowhere.

7170. I do not care whether you say "principles" or the proportion between what you give and what the tenant would get if you allowed him to sell?—Nowhere.

7171. I understood you to refer to the Land Commission as having laid it down as fortifying you in your course?—I said the only judicial pronouncement about the specified value was a dictum of the late Judge O'Hagan, who seemed to think the specified value was the value of the tenant's improvements and nothing else.

7172. Well, as one of those who were concerned in passing the Act of 1881 I certainly saw no such intention, and I find no trace of such an intention in the Act itself; you are simply directed to fix the specified value?—Yes.

7173. You are to specify that value?—Certainly; but what value?

7174. I should not have thought that if the tenant could get 25 years in the open market you would fix five years in court?—That same thing applies to fixing fair rent.

7175. At present I am on specified value?—We take the two sections as meaning very much the same sort of thing, reasonable.

7176. Reasonable, of course; but is it reasonable if the tenant can get 25 years' purchase outside in the street, you inside in the house may say, "You must sell this at five years' purchase"?—It is as reasonable as it is if the landlord can get 50*l.* to fix the rent at 25*l.*

7177. That is a question of policy?—It appears on reading the Act that the intention of it is to give the landlord the right of pre-emption at less than the extreme competition price that could be got if it were bought at an auction.

7178. The competition price?—Yes, I should say so.

7179. In other words, less than the 25 years' purchase?—I do not say that we should fix the specified value at five years' purchase if we thought that it would bring 25 years' purchase in the market.

7180. Now, if we are to search out the true intention of the Legislature, I refer you to the opening words of the Land Act of 1881. Now I come to the true value, which you say you are to fix and which the tenant is to get: "The tenant for the time being of every holding, not hereinafter specially excepted from the provisions of this Act, may sell his tenancy for the best price that can be got for the same"?—Yes.

7181. Does that occur to you as indicating that he must sell it for the least price that can be got?—That throws no light upon it, in my opinion.

7182. It is a general declaration of intention?—Yes, but unless you cut down all the exceptions afterwards it has no effect; it is qualified by those.

7183. It is qualified to this extent: "On receiving such notice the landlord may purchase the tenancy for such sums as may be agreed upon, or, in the event of disagreement, may be ascertained by the court to be the true value thereof." Are these words not open to the interpretation that the court is to estimate what would be found to be the true value if the tenant sold in the open; that is, that the right of pre-emption simply guards the landlord against having the price put up against him at an auction because he is the landlord, but that you are to fix the price at what it would be fixed at in competition if the landlord were not a competitor?—I do not think that ever occurred to any court.

7184. Does it seem a strained inference from the language?—I do not think so; there is one indication on that subject about fixing the specified value; the only way in which specified value can be charged as between landlord and tenant

Mr. *Sexton*—continued.

tenant is by improvements effected by the tenant or by deterioration.

7185. Certainly; because if you once fix the specified value of the holding there is no way in which it can be charged except by improvements?—Yes; the market value might rise very much in the meantime.

7186. The market value might rise in the meantime?—It might.

7187. Does market value fluctuate so much?—Oh, yes, considerably; it goes down in bad times; it went down considerably after 1879, no doubt.

7188. I think you suggested that unless the rule as to specified value were obtained the landlord would have to pay too high a price if he wanted to resume?—Well, I think he would have to pay a very high price.

7189. Do you take it to be the intention of Parliament that the landlords should take the land back into their own hands, and that that land should be tenanted?—I should say from that section it is evidently the intention of the Legislature that the landlord should in some cases take back the land into his own hands.

7190. Do you in practice govern the rule as to specified value by the consideration that the landlord may want to resume the land for himself?—I do not quite follow.

7191. For his own use?—In fixing a specified value in every case in which the landlord applies it has been always my view that we ought to do it.

7192. Do you limit it by the consideration that the landlord may want to resume the land for his own use and not let it again?—I do not think we take that into consideration at all.

7193. You think it right to protect the incoming tenant against having to pay too large a price?—It would be a protection, but I do not know that that is ever considered in fixing specified value.

7194. I think you said on the last day you were here that it is desirable to prevent the incoming tenant spending his capital on a fictitious value?—Yes.

7195. What do you call "a fictitious value"?—A value over what we fix as the true value.

7196. Is what every one is willing to give, and what will be given in public sale, a fictitious value?—We consider it so to a very large extent, and I think everybody thinks so in Ireland.

7197. The man who is going there, and wants to settle there, may be taken to be some judge of what he is buying, may he not?—Exactly; but the same considerations apply to the rent; precisely.

7198. I beg you to keep to "value" at present?—The two things must be kept together.

7199. Do you allow the amount of the fair rent to affect you in fixing the amount of the specified value?—Yes, I think we generally fix it on a certain number of years' purchase of the fair rent. I do not mean a fixed number of years' purchase, but according to the circumstances of each holding, with, of course, additions or subtractions according to the nature of

Mr. *Sexton*—continued.

the buildings and various circumstances of that kind.

7200. The amount of fair rent does not dictate the number of years' purchase?—It does in this way, that we should fix a very much lower value, in the number of years' purchase, for very large than for small holdings.

7201. The size of the holding, but not the amount of the rent, would affect you?—I mean not the size of the holding but the amount of the rent; not the area of the holding; I mean this: if the fair rent is 200*l.* a year we should not fix as many years' purchase of that for the specified value as we should if the fair rent were only 10*l.* a year.

7202. Do you allow the amount given for tenant-right to affect you in fixing the amount of the specified value?—Not at all; not the slightest.

7203. Therefore the value of the tenants' interest, or the price given for it, is entirely separable and separated, in your policy, from the amount of the rent?—Yes, entirely.

7204. I mean the price of the one does not affect the level of the other?—No.

7205. Now what is the effect upon an incoming tenant, or a person desiring land in Ireland, of compelling the outgoing tenant to sell at a lower value than he could have in the market; the landlord buys at a fraction of the price he would if the tenant sold on the open market firstly, does he not?—I should not say always. I think we have no guide to what a man would get in the open market. Of course selling in the open market is a very precarious thing; sometimes there is a good bidder, sometimes there is no bidder.

7206. What is the ordinary state; is not there always an active state of competition for land in Ireland?—No, indeed there is not. I have known cases where men could not sell the interest in their farms.

7207. Do you suggest that, as a rule, or generally, the tenant would have much difficulty in selling his interest?—In the case of large farms I think so.

7208. In the case of large farms?—I mean at anything like what I should consider a fair price.

7209. Take the case of an ordinary rent, say of 20 or 50 acres, with a house upon it, ready for the tenant?—Such holdings can nearly always be sold at a good price.

7210. If in such a case as that you say that that which could be sold for 25 years' purchase is to be sold for five or ten, or anything like that, the result is that the landlord comes in at a much lower price?—Yes.

7211. Then he can re-let, the landlord?—If he re-lets it within 15 years the man is a "present tenant."

7212. It is 15 years from the passing of the Act: he can let it to a "future tenant" after 15 years from the passing of the Act?—I really forget what the section says; I think it is within 15 years from the purchase.

7213. I refer you to Section 20 of the Act of 1881, Sub-section 3. "Where a present tenancy in a holding is purchased by the landlord from

Mr. *Sexton*—continued.

the tenant in exercise of his right of pre-emption under this Act, and not on the application or by the wish of the tenant, or as a bidder in the open market, then if the landlord within 15 years from the passing of this Act re-lets the same holding to another tenant, the same shall be subject, from and after the time when it has been so re-let, to all the provisions of this Act which are applicable to present tenancies." Therefore in all cases in which you have allowed the landlord to buy at what you call "true value," a lower value than he could have bought it at in the market in two years from this time (August 1896), he can re-let that land to a "future tenant" at what rent he pleases?—At what rent the tenant agrees to.

7214. Oh, certainly; I mean there is no public control over him, is not that so?—Yes.

7215. And even before 1896 he can re-let it to a "present tenant"?—Yes.

7216. Is there anything to prevent him from taking from the "present tenant" by way of fine on entry all the difference between what he paid as true value and what the incoming tenant would have paid in the open market?—I think not.

7217. And what the outgoing tenant would receive in the open market?—I think there is no doubt about it.

7218. Now I invite you to examine the effect. You compel the outgoing tenant to sell at a price lower than the market price?—Yes, sometimes.

7219. I am taking the general effect?—I am not sure of that; "general" I do not know, but I know that in cases where we have fixed a good many specified values, I have noticed sales in the same neighbourhood at prices not very different to those we fixed.

7220. It is open to doubt?—Sometimes we may give more.

7221. It is open to doubt, it is open to question?—I know that those places where specified value is fixed are not like Ulster.

7222. You oblige the outgoing tenant to sell at a lower price than he could receive, as a rule?—Yes.

7223. Then the landlord may re-let the land, and he may receive from the incoming tenant as much as the incoming tenant would have paid to the outgoing tenant in the open market?—He may.

7224. And the landlord pockets the difference?—Yes.

7225. He appropriates to that extent the value to the outgoing tenant's property?—That is a question: What property has the outgoing tenant in it? That is what we do not see.

7226. What I suggest to you about his property is that its value is that people are willing to give for it?—That is a question.

7227. You consider that that is a question?—We should go into the further question of: Where did he get it from, except his improvements?

7228. At any rate, putting it unquestionably, you take from the outgoing tenant a part of what he might have got for what he has to sell?—A part of what he could get if the Act had been drawn in a different manner; but you must remember he gets the privilege of selling with the restrictions as to pre-emption all inextricably mixed up together.

7229. A part of what he could get if he were an unrestricted custom tenant of Ulster?—Yes.

7230. The unrestricted custom tenant of Ulster sells for what he can get?—Yes.

7231. And the incoming tenant pays it?—Yes.

7232. Does that injure anybody. You fix the rents just the same as if the price was low. You fix the rents in Ulster without regard to unrestricted tenant-right?—Yes; quite so.

7233. The landlord gets his fair rent?—Yes.

7234. The outgoing tenant gets the full value of his tenancy?—Yes.

7235. The incoming tenant pays for the piece of property, and everybody is satisfied; who is injured?—The incoming tenant is very often injured. I suppose there is no part of the country in which so many changes of tenancy occur as in Ulster. I think it would be generally admitted that there are more changes of tenancy on estates where tenants are allowed to sell than on any others.

7236. If the Ulster tenant has paid, and all those concerned in Ulster will not give up the right to sell, they regard it as a most cherished part of the Ulster custom?—I believe so. I do not know whether the same opinion is held by all the people now about that; I really do not know; but I know opinion upon the subject in other parts of the country where free sale was allowed has changed to some extent since the bad times commenced.

7237. The tenant in other parts is different, no doubt, from the unrestricted Ulster tenant in this, that the one can get the full value of his tenancy whilst the other may have to sell to a solitary customer at the price you fix?—Yes.

7238. Then the landlord may get the difference from the incoming tenant?—Yes.

7239. You have been a lay as well as a legal Sub-Commissioner?—Yes.

7240. A lay Sub-Commissioner has a vote upon questions of law, has he not?—Yes, in theory, but in practice the lay Sub-Commissioner almost always takes his view of the law from the legal Sub-Commissioner. I have known a few questions of law and fact where the Sub-Commissioners differed on legal points.

7241. We may take it that the practice is that you lay down the law?—Yes.

7242. Now how do you ascertain the development of the law as laid down by the Land Commission or the Court of Appeal?—By reading the Reports.

7243. All the cases are not reported we hear?—No, they are not.

7244. Suppose the Court of Appeal laid down a principle, and the case was not reported, how would you learn it?—I think nearly all the important cases are reported either in the newspapers or in the Reports; and of course we hear of important cases, I mean the Sub-Commissioners hear of important cases from each other, from the Commissioners.

Mr. *Sexton*—continued.

7245. You hear of them in conversation?—Yes.

7246. It seems rather a loose way of carrying law about?—It is the same way, I think, that is adopted in every other court.

7247. Would it not be a safer way if there were an authorised report of every judgment?—Undoubtedly; but I do not know where the money would be found.

7248. There is plenty of money for all proper uses; how do you learn the law as laid down by the Land Commission?—From reading the Reports.

7249. The Committee of Law Reporting only pay casual attention to the Land Commission, do they not?—I think they report most of the important cases.

7250. I suggest to you that very considerable numbers are not reported?—Now, I think, they report them.

7251. I think the legal profession of Ireland is dependent upon the "Irish Law Times," as a general rule, is it not?—Very much.

7252. And even there the cases are not all reported?—I think they report all the important cases.

7253. Do you think it is a satisfactory mode of dealing with the law as laid down by the tribunals of the country, that it does not reach you except by chance reports or conversations with other lawyers?—Of course it would be more satisfactory if every case were reported fully; it would be a dreadful prospect for lawyers, but no doubt it would be better.

7254. You, as a legal Commissioner, have a vote on questions of value, have you not?—Yes, which of course I never exercise in an ordinary case; I know nothing about it.

7255. You instruct the lay Commissioners, on leaving the court, what improvements they are to recognise?—Generally I say, "Buildings, landlords," "buildings, tenants," or whatever it is, if there is any question.

7256. When they come back to the court you take no trouble about anything except their verdict?—Oh yes, no trouble.

7257. A disagreement, you say, is no infrequent thing?—They scarcely ever agree to a penny.

7258. They often do not agree to a pound, I think?—Very often not; if they did I should think their valuation would be worthless.

7259. Do not they differ to the extent of many pounds sometimes?—Yes.

7260. Do they differ often in regard to fair rent, the elements of value contained in the pink report, or what?—Sometimes the element of value, sometimes on the land as it stands; very often they differ as to how much ought to be put on buildings; one man will say 3*l.*, another 5*l.*

7261. When they differ upon the elements of value as distinguished from fair rent value do you ever interfere with your vote?—No, I let each man bring out what he thinks is the fair rent on all the elements.

7262. What is your usual practice then?—If there is not a great difference, then we divide the difference; that is the usual thing.

Mr. *Sexton*—continued.

7263. You divide the difference; then, of course, in order to make that effectual one of them would have to accept the division?—Both of them.

7264. One could do it; one of them joining with you in accepting the division, the other would have to give way?—Unless both accept it we do not do that; sometimes the difference is so great that one man will not agree to that, and he insists on dissenting.

7265. But if you suggest splitting the difference, and one of them agrees with you, that would settle it; but you say that is not done if the other objects?—Yes, if there is a great difference between us.

7266. Then what do you do?—Then I agree with one man to fix some rent, either the rent he thinks fair, or what I generally do is to induce him to come a little nearer to the other man and agree with him.

7267. Assuming each stands firm, you accept the rent of the one or the other?—Oh, yes, assuming each stands firm, that must be done.

7268. Have you any general rule; do you accept the higher or the lower rent?—Well, no, I have no general rule; I think as a matter of fact I have accepted the higher rent generally.

7269. Why have you accepted the higher rent?—That is because I had more confidence in the man that happened to be valuing.

7270. The man who fixed the higher rent has generally attracted your confidence more than the other?—"Generally," I cannot say; it has occurred very seldom.

7271. The man who fixed the lower rent has had the misfortune not to attract your confidence?—He has had that misfortune.

7272. When the tenant comes into court he is immediately encountered with whether he is a tenant at all, or whether he is a "present tenant," whether he holds under a fee farm grant, or whether he has sub-let; and if he comes within either of the classes excluded he is not a tenant at all, is he?—Quite so.

7273. In fact, the tenant is encountered at his entry into the court by the whole of those four pages of exceptions handed in by Mr. Bailey?—I do not know; I would not like to commit myself to that without reading the "four pages."

7274. You told me that if this be the summary it would be accurate?—Yes, I said in general; but I must decline to commit myself to the four pages of exceptions without reading them.

7275. I should not have been surprised if, considering the time that has elapsed since you were here first and the time at which Mr. Bailey handed in this paper, you had taken the trouble to read it?—I never saw that paper. I never got a copy of it.

7276. You never inquired about it?—No.

7277. You are not overpowered by curiosity, certainly?—I really am not.

7278. Now as to the exclusion of sub-letting, do you consider it acts hardly upon a tenant to have to pay a higher rent than he would otherwise have to pay because of some slight sub-letting which does not prejudice the interest of the land-

Mr. *Sexton*—continued.

lord, but rather secures and increases the security of the rent?—I think in some cases it is very hard. I think that in a case (as I have said, I think, in answer to Mr. Fuller) in which the sub-letting exists before the lease is made, or in which a sub-letting exists; suppose it is a house and a piece of land which is always sub-let, whenever it is determined the tenant lets it again, it being evidently the intention of the parties that it should be kept sub-let; I think that is a very hard case; but in other cases, where he has taken with a contract against sub-letting, or sub-let without leave expressly, of course it is a question of policy; if you put that tenant in the same position as a man who has not sub-let, you are going back against the policy of the Legislature for generations in Ireland.

7279. The Act of 1887 involved the saving of the tenant against sub-letting; but I understand that that saving only operated up to the passing of the Act?—Yes, that is so.

7280. So that if the tenant had sub-let to labourers before 1887, or he had made a trivial sub-letting, that would save him up to the passing of the Act; but since 1887 it would not save him?—Yes.

7281. Do you think it expedient that that should continue; that a sub-letting for labourers or a trivial sub-letting should be allowed up to 1887, but not since?—Well, trivial sub-letting after 1887 without the leave of the landlord is one thing; as to labourers sub-lettings, I think the tenant ought to have the power to sub-let, and I think the question is never raised where it is a labourer's sub-letting.

7282. Labourers must be accommodated like other people?—Yes.

7283. And even if they are not occupied on the holding, but in the vicinity, do not you think some provision should be made so that they are allowed to live somewhere?—There is a very large provision made.

7284. It works expensively?—Not for the labourers.

7285. For the guardians of the rates?—Yes, very.

7286. The tenant is obliged to prove that his holding is not agricultural or pastoral?—Well, the burden of proof always rests on the landlord in that case.

7287. Lord Justice FitzGibbon told us they must prove it is not agricultural or pastoral?—It does not make much difference.

7288. Am I right in saying that all the exceptions in the Act of 1881 may be applied cumulatively, or in succession to the holding; first the landlord may say it is residential?—Yes, he may make that point, of course.

7289. Of course, in succession, first he may say it is residential?—Yes, well, residential, that of course comes within the exception of not agricultural or pastoral; the word "residential" does not occur in the Act.

7290. But it is an exception upon that?—Yes.

7291. And if the house on the holding is better than an ordinary farmer's house the tenant is in some danger?—Very little. The question

Mr. *Sexton*—continued.

is, was the whole place together taken mainly as a residence and not as a farm?

7292. Whether the residence is the more important thing or the farm, even though it be an agricultural holding?—Well, I do not think that is exactly the way to put it; do you mean the house itself?

7293. Yes, the house itself?—No; the question is whether the whole place together is mainly taken and used as a residence.

7294. But the holding may be agricultural still?—Nearly every residential holding has a part of it agricultural.

7295. The agricultural part of the holding does not save the tenant if the substantial character of the holding is residential?—Certainly not; everybody who has a residence in the country wants a little farm or a big one.

7296. Where there is something which is not agricultural, no matter how trivial, a brickfield or a quarry, or where tolls are included in the lease, or a mill, a mill holding, the tenant is in danger?—I have never known a case dismissed on account of a quarry, nor a brickfield; I have known the point raised about a brickfield, but the case was not dismissed.

7297. Do you know that Lord Chancellor Walker has laid it down that the existence of an alien element existing on the holding would not save the tenant; *deminimis non curat lex* does not apply, the tenant is out?—Yes.

7298. In the case of demesne land, notwithstanding what was said by Lord Justice Fitzgerald before the passing of the Act of 1881, "once demesne land, demesne land for ever" is the rule, is it not?—No, I will not say that; I do not think so. There was a case decided last week or the week before, I think, where the contrary to that was held, it was re-heard by the Chief Commissioners; it was undoubtedly a demesne (the holding was); it was let, I think, in the year 1857 by the man who bought the land, but never occupied himself on a fee-farm grant, I think.

7299. The length of time that land has been used for an agricultural purpose will not undemesne it?—Well, there is a case that I can give you now; we fixed a rent on it, the case was re-heard on the landlord's application, the Chief Commissioners confirmed our decision and fixed the rent.

7300. That may have been upon special facts?—There are special facts in every case.

7301. I know; but taken by itself the circumstance that land has been used for agricultural purposes for a certain number of years will not undemesne it, taken by itself?—Taken by itself, I think probably not.

7302. And even though the land is let on perpetual lease, or a fee-farm grant?—That has been held in the case of Spencer *v.* Tedcastle.

7303. Though the landlord has no possibility of taking that back at all, the land is always to be demesne land?—So it has been held.

7304. My point is, that it may be demesne land for ever, even although the landlord never has the right of taking it back again?—Yes.

7305. Now, about town-parks; the main point about town-parks is, that they must have

Mr. *Sexton*—continued.

an accommodation value apart from the agricultural value of the land in the same place or the same position?—Yes, to people living in the town.

7306. And the curious thing is this, that it depends upon whether the man that lived in the town (I think we had better call it "place") lived in the place on the 22nd August 1881?—Well, if you have Lord Justice FitzGibbon here, he will perhaps explain that; it is a decision of the Court of Appeal.

7307. It does not matter a pin where the man lived ever since; if he lived in the town on that night or day he is out of the Act?—Yes; not on that night; I do not say that.

7308. What "line" means is a nice question of law, of course?—It is.

7309. That is one of the questions of law you have not settled; suppose you find the accommodation value to arise from the presence of these inhabitants; does it really matter in practice whether the thing is larger than a village or smaller than a town?—No; but according to the wording of the Act it must be a town. You can hardly have a thing called a "town-park" unless there is a town to start with, surely.

7310. What is a town? "Something larger than a village." How small is a village?—I do not know; every case must be decided on its own merits; that is all I can say about it. That question, I may say, has been discussed in England; it has been discussed in England on some of the Railway Acts, and the rule is that every case must be decided on its own facts.

7311. Lord Justice FitzGibbon rather thought he had solved our doubts when he said that it must be larger than a village; but he did not say how large or how small the village must be?—No; I am sure he did not, and never will.

7312. If you find accommodation value the tenant is not affected by any question of population if the accommodation value is there; a very small popnlation may make a town, if, as I say, you find accommodation value?—Yes; towns in Ireland are very small as a general rule; there are very few big towns.

7313. You may be aware that the House of Commons fixed 2,000 as their own limit of population?—That would exclude, of course, the great majority of the towns in Ireland.

7314. I mention the fact only in order to ask you whether the accommodation value is of such importance in the case that you do not go down very much lower than that?—Very much lower; that would exclude the majority of towns in Ireland; things that are undoubtedly towns.

7315. A good many of these town-parks are material to the people who hold them, are they not?—I have heard that is so in some places; I cannot say that I know that. I cannot say I have ever known that to be so; I think in all cases I have had before me they were really town-parks; I mean in all cases dismissed as such.

7316. How do you mean, "really town-parks"?—*Bonâ fide* used for the accommodation of a town house and not for the purposes of profit.

Mr. *Sexton*—continued.

7317. For agricultural use?—It is an agricultural use, because most of them would grow potatoes or something of that kind.

7318. Then he holds it for profit?—Not exactly for profit; for instance, there are many towns where milk is almost impossible to be bought in the town, and unless he has a town-park of his own he would not have milk.

7319. I do not suggest to you that an agricultural rent ought to be fixed upon town-parks, but I do suggest to you that the average men who are paid to fill up the pink report and deduce the fair rent from it would be quite as well able to say what was the accommodation value, having regard to the demand?—I cannot say they would. I do not think anybody knows the accommodation value of a holding in a given town, except people who are there.

7320. Is it not a matter of evidence?—Yes, so is all value; but we do not rely much upon evidence.

7321. You take evidence in the usual cases?—We take evidence, but we do not fix rents on the evidence very much.

7322. I suppose you find by evidence what people in the town were generally willing to give for such land?—That is the present rent?

7323. No; because individual tenants may, by reason of desiring to have some particular piece of land, be under a higher rent than would be usually paid?—I do not think so; in town-parks there is generally a standard; certainly if the town-parks belong to one man, and they are all willing to pay that.

7324. I suggest to you that if you find a difference because of that standard, would it not be a fair thing to bring it up to that standard?—No; I think it fair to let a man settle his own affairs.

7325. As to letting a man settle his own affairs, it was the knowledge of Parliament that men were not able to settle their own affairs that put you into the position in which we have the honour to find you?—I think where they are able to protect themselves they ought to be left to do it; and in town-parks I do not see that they are not able to protect themselves very well.

7326. As to pasture, you have said that the value of cattle is the most important element in Irish agriculture?—Yes.

7327. And pasture is rather developing?—Yes, decidedly.

7328. Is a pasture tenant as liable to be considered highly rented as another if there is no protection in the law?—Well, I do not know that he is quite as liable as others. I think probably the highest rents are on tillage tenants where the holdings are small. The men who take pasture lands are men who are better able to look after their own interests than the small men who must get land.

7329. Assuming there are men who want the land and cannot stand up against the landlord, do you see any reason why these pasture holdings should not have fair rents fixed as well as the tillage holdings, seeing that Ireland is running into pasture largely now?—I think that would be so. I cannot imagine a man taking a

Mr. *Sexton*—continued.

pasture farm now if he is not able to protect himself.

7330. And if there were such cases, it would be desirable to protect them, would it not?—I suppose it would.

7331. We have heard from the Lord Justice, I think, that a man may be shut out of court by reason of letting for temporary convenience, either for lives or years or for lives and years?—Yes.

7332. That seems a curious thing that the Legislature did not foresee?—I suppose the foundation of the thing is that the Legislature intended that the letting was not to be permanent.

7333. Now, let me ask you about the term "improvements:" "Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding." If you find a work to be too good for the holding, do you treat it in favour of the tenant?—It could hardly turn up except in cases of buildings. I have never had a case where it turned up. There has been, at least, one case in the north where it did arise.

7334. The house was too good for the holding?—It was really a villa.

7335. Would it not be a very fair thing if the house were excluded, and the rent put upon the land?—I really cannot answer that without knowing the facts of the case. I do not know the facts.

7336. Do you know them sufficiently to know that although the house was too good, it was put into the rent, although it belonged to the tenant?—I do not know it.

7337. Would you administer the Act in that sense?—I have never had a case where rent was put on because the building was too good. I have never heard the landlord ask for it. The question asked is: "Does the landlord claim the buildings?"

7338. Would it not be open to you under this section, if the house were too good, and therefore not suitable, to put rent on the house, although it belonged to the tenant?—I think it would.

7339. Now I want to ask you about the elements of the definition: "Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding; also, tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding"?—That really only occurs in the cases where the Act of 1870 applies.

7340. The whole theory of the interpretation has attached all the limitations of the Act of 1870?—Then I may answer your question in this way: that is not taken into account in fixing the rent.

7341. It is not?—Notwithstanding the fact of the man manuring it and getting it ready for cropping, no more value is put on them than if those works had not been done; it does not really apply to fixing a rent.

7342. Suppose you find, on fixing a rent, valuable manure applied so as to produce a good effect which may last for many years, do you ignore that in fixing the rent?—As far as we can, yes.

7343. You ignore it?—Part of the land is always manured in tillage farming: it must be; part of it may be manured the year we go there, part of it the year before, and so on.

7344. You value the land as it stands?—As much as we can, yes; I mean as it stands without manure put in for this year's crop; no one ever values that.

7345. I am speaking of your operations through a series of years; it has a permanent effect upon the value of the holding?—I think that may be left out of account.

7346. Why?—Because it does not exist.

7347. Mr. O'Keeffe is of a contrary opinion?—He says those men have not come into court, and I agree with him in that; they have not in the cases that I have heard.

7348. Mr. O'Keeffe told us that by such manuring of tillage tenants had doubled the value of their holdings?—Yes, and remained out of court in consequence.

7349. Why have they remained out of court. Your evidence is very good reason why they stay out, because if they came in they would get no benefit?—I do not know. I agree that they do not come in; I agree with him in that.

7350. If they were to go in what would happen?—In such a case we should try to value the land as if it had been manured in the ordinary way. Really everybody knows if there are such cases they must be extremely rare, that is to say by putting in more manure than is taken out in the value of the crops: it does not occur.

7351. You think the prairie value of Ireland was greater than the value now?—I do in some places, but not all over Ireland.

7352. You do not pledge your judicial reputation to that?—No, I do not.

7353. If you think the prairie value was higher than the value of it now you naturally minimise the value of improvements?—I think where good grass land is mown year after year it is merely a system of exhaustion.

7354. What is the process of agriculture in any country except a process of exhaustion and renewal?—In Ireland it is very often exhaustion without renewal.

7355. What do you say about what we have heard as to the labour of generations in turning the value of the soil into good arable land?—The effect is this: if you go through Ireland you will find some of the wet districts wet still, rushes growing on the land still, and so on. I do not think there is as much alteration as some people imagine from what we hear them saying.

7356. You know the county of Waterford?—Yes.

7357. Is it not a fact that on Sir John Keane's estate and the Duke of Devonshire's estate there are hundreds of farms turning mountain land into arable land?—Yes, on Sir John Keane's estate there has been reclamation of mountain land.

7358. Is not that going on more or less all over Ireland?—I would not say that; that is one of the places I should have selected as reclamation.

7359. That

Mr. *Sexton*—continued.

7359. That is one of the places, is it?—Yes, and one place I should have thought that has been very much encouraged by the landlord. They get leases for nominal rents for a certain number of years, say half-a-crown an acre, then 5*s.*, and so on.

7360. We know that in Ireland the improvements are made as a rule by the tenants and not by the landlords?—Yes, that is so.

7361. Is it encouraging, do you think, to the tenant to say that if he applies costly manures for years and alters fundamentally the character of the soil, he should not have the benefit of it?—I think it would not be encouraging, and I have not said it would.

7362. I understood you to say that in the case of manures you would simply regard it as compensation on quitting the holding, not fair rent?—That is ordinary manure, the ordinary manure that comes on a tillage farm. We should value that land as if it had not been manured for that crop; there is no difficulty at all about that.

7363. The other class of cases you presented to the Committee was where there had been an accumulation of manure going on for many years and the land had been greatly improved; how long would the effect of good liming last?—The ordinary rule in England is, I think, about seven years, ordinary liming; but for mountain reclamation they put a very heavy dose of lime there, and no doubt it would last much longer.

7364. Mr. O'Keeffe, who is an eminent chemist, no doubt, conveyed to us that it might last a generation?—His opinion is not a general one on that subject.

7365. Not a general one?—No, not with regard to the ordinary process of liming; certainly not.

7366. Do you fix a percentage so as to pay back the tenant within the statutory term?—No, I do not think so.

7367. What principle do you go upon?—In what class of improvement?

7368. In any class, to pay him back?—I do not think we ever think of paying him back; we put on a percentage on the outlay which may go on for ever if we fix the rent afterwards.

7369. You only fix it for 15 years?—Yes, but somebody else will fix it after the 15 years, I suppose.

7370. That is what I want to get at?—We do not pay that back within 15 years; certainly not if it is a permanent improvement. If it were paid back within the 15 years he would have no claim for that improvement after 15 years. That would not be fair to the tenant, I think, if the improvement was really a permanent one.

7371. Suppose you gave a percentage which would pay him back in 15 years what he had spent simply, what would happen to that improvement in that second statutory term?—I do not exactly understand how you would pay back by a percentage; 5 per cent. would not pay the improvement back.

7372. Suppose he spent a hundred pounds and you gave him 7 per cent. the first 10 years, and that he spent 50*l.* and you gave him 5 per cent. for the five years, that would be 10 years and five years; he would be paid back, would he not?—If he got 5 per cent. on his improvement why should he only get it for 15 years?

Mr. *Carson.*

7373. What you do is not to put rent on, is it not?—Yes.

Mr. *Sexton.*

7374. Suppose you found that a man had spent a hundred pounds, how would you proceed to pay him back?—We should not pay him back at all, but we should deduct from the rent of the land as it stands with his improvements so much as we thought he was entitled to on his outlay.

7375. That is not the theory explained to us here; the theory is that he is to be paid the cost; do you regard it as interest that you give him?—Yes, so it is considered in Adams *v.* Dunseath; and I think that is the reasonable way to regard it.

7376. What was said in Adams *v.* Dunseath was that an ample and liberal allowance should be made?—Yes; and it is evidently by way of interest, though it is a high rate.

7377. What becomes of the capital?—The capital remains in the land and it is the property of the tenant.

7378. If you allow the interest what becomes of the improvement?—If the improvement is permanent I should think it would be allowed in the next period, the interest.

7379. We know immediately after the Land Act passed the first Land Commissioners who had to consider it understood it to mean that after the allowance the whole of the letting value was to go to the tenant. That was the first understanding of the Act, was it not?—Yes.

7380. How is it administered now?—I think pretty much in the same way.

7381. That has not been the evidence hitherto; the evidence is that after the interest, or allowance, or whatever you call it, is made to the tenant, the rest of the letting value goes to the landlord?—Yes, I beg your pardon; you said "to the tenant."

7382. If it is not there it cannot go. The rest of the letting value, where there is any, goes to the landlord?—Yes; of course, as I said before, the cases in which there is any balance over after allowing the tenant interest are extremely few.

7383. That does not come within your own observation?—Oh, yes, it does.

7384. How?—Surely we must estimate how much increased letting value has been put on by the tenant's output.

7385. No, you do not?—I beg your pardon.

7386. You estimate the whole as it stands?—Yes.

7387. Then you deduct from that an allowance?—It is absolutely necessary to go further than that, and ascertain as well as we can what was the state of the land before the improvement was made.

7388. You find what the improvement cost?—One cannot go below what the land was worth before the improvement was made.

7389. On the facts you have you make that allowance; that is what you have to do?—We do more.

7390. You do not inquire how much it has added to the letting value?—Necessarily we do in every case.

7391. You do not assume to consider that you value the holding as it stands?—Yes.

 7392. Including

Mr. *Sexton*—continued.

7392. Including the improvements?—Yes.

7393. And all their letting value in one item?—Yes.

7394. Then you find out what it would have cost the landlords to make them?—Yes.

7395. And you allow a certain interest on that?—We go another step beyond that.

7396. What is the other step?—We inquire what the value of the land was before its reclamation. It is reclamation you are speaking of, I suppose, because that is the only thing it applies to.

7397. You value the land as it was before it was reclaimed?—Yes; if there is any margin between that and a liberal interest on the tenant's outlay, then the question arises, but not otherwise.

7398. The question of the balance left after making that allowance does not come before you?—Yes; we ascertain the value before reclamation, then ascertain the present value after the reclamation; surely you will find there what the improvement is.

7399. You find the capital difference between the value of the land before it was reclaimed and after?—Not the capital value, the difference estimated in the yearly rent.

7400. It is not on the yearly rent you allow the difference, it is on the capital difference?—In allowing that interest we cannot go below what the original value of the land was before the reclamation was made; we must ascertain that.

7401. But what you have got to find, in order to make the allowance, I suggest, is what was the capital value of the land before and after?—Yes, "capital value"?

7402. Yes?—We would ascertain what the expeuse was and allow interest on that at five per cent.

7403. I submit to you that that process and that question of allowing that interest does not at all lead you to an ascertainment of what letting value is added?—I think it does.

7404. I do not think you have shown it?—Surely it cannot be allowed unless we ascertain first whether it is increased by that amount.

7405. Assuming it to be there, whether small or large, whether the tenant has doubled the value, as Mr. O'Keeffe tells us, or not, all that is left after the interest goes to the landlord?—I think that is the value we must find. I have never had a case in which that turned up in that naked way where there has been a large increased value given by the tenant's work. There have been other circumstances to take into account. In this case you speak of, for instance, Waterford land was let to a tenant unreclaimed at 1*s.* an acre for so many years, then at 2*s.* 6*d.* for so many years, and then at 5*s.* for so many years on the ground that the land was to be reclaimed; the lease was to be considered compensation for the reclamation.

7406. You are talking now of a "lease"?—I will give you another case where there was no lease.

7407. Keep to the ordinary case?—An extremely ordinary case in my experience is that

Mr. *Sexton*—continued.

class of case. There is one other class of case if you will allow me to refer to it, and I do not know that it turns up in any other.

7408. The question turns up in every case where there are improvements?—Certainly not. If you took all the money expended on improvements you would not find, in my judgment, that it would increase the letting value as much as 5 per cent. or anything like it all over Ireland.

7409. The point is where it does exist?—Very well, where it does exist. In my experience I say that I have never known a case where there have not been special circumstances to take into account besides that; for instance, that lease given as compensation, that is one class of case.

7410. The Court of Appeal in Adams *v.* Dunseath evidently regarded that as an element of extreme importance?—That is because they know nothing about it practically.

7411. Oh, indeed?—Yes, it is; I defy anybody to produce many such instances as the Master of the Rolls there cited. He supposed the instance of an expenditure, the expenditure of 500*l.*, producing an annual increased value of 100*l.*; he treated that as an everyday common thing; where the cases are I do not know.

7412. The first Land Commission administer the Land Act in one sense; you administer it in another sense; the Court of Appeal take it in another, a third, sense, which you take to be nonsense?—I do not admit either construction.

7413. At any rate, where improvements give a letting value over the interest the rest of the letting value goes to the landlord?—I do not admit that we do that in all cases.

7414. But that is the law, is it not?—I should think it is.

7415. Customs prevail in Ulster, do they not?—Yes.

7416. Is a tenant called upon to prove the custom in each case or is it presumed?—I have never heard of a tenant proving the custom for the purpose of fixing fair rent; only for the purpose of avoiding having a specified value fixed.

7417. In Ulster it is a presumption that all the improvements belong to the tenant, is it not?—Well, in my experience they prove the improvements; I think it very much the same as proving fair rent.

7418. Why?—Because it is necessary in many cases.

7419. Does not that defeat the presumption altogether?—In the case of drains, as I have already explained, somebody must prove they are there, and if he proves they are there, he must prove who made them.

7420. Without going to the non-visible ones, I will take all the visible ones; are they presumed to belong to the tenant?—Yes.

7421. All visible improvements?—I do not know of anything else.

7422. Is not there fencing, roads, planting anything in the soil?—Yes.

7423. These are presumed to be made by the tenant?—Yes.

7424. Anywhere but in Ulster there seems to be great confusion about the right of the tenant

to

Mr. *Sexton*—continued.

to presumption. Follow me for a moment, and see whether this is the law. Outside Ulster a tenant cannot claim for any improvements made before 1870, except permanent buildings and reclamation?—Yes; that has nothing to do with presumption.

7425. I am now on the right?—Yes.

7426. He cannot claim?—The fact that they have not the presumption in cases like that is of no consequence, because, as the right to claim goes back to so remote a time, the evidence of presumption does not arise.

7427. He can claim for all improvements since 1870?—Yes.

7428. All improvements made since 1870 may be the subject of a claim?—Yes.

7429. But between 1850 and 1870 he can claim only for permanent buildings and reclamation, and in certain cases he cannot claim those?—He can claim permanent buildings and reclamation for any period, but the presumption only arises later.

7430. I want to go to between 1850 and 1870; in that period for improvements other than building and reclamation, he can only claim for those since 1870?—Quite so.

7431. And even between 1850 and 1870 he cannot prove for buildings and reclamations if the landlord has bought?—You are mixing up right to claim and presumption; that has led to a great deal of confusion.

7432. Take the right simply; he can claim buildings and reclamation up to 1870, only these, but he can claim for everything since?—For buildings and reclamation he can claim from any period.

7433. But only for these down to 1870?—For buildings and reclamation?

7434. Yes, surely, yes. The law, as I have taken it from the Act, is that the tenant cannot claim "in respect of any improvement made before the passing of this Act, and 20 years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land," is that so?—Yes; he can then claim for every improvement made after that; he can claim for buildings and reclamation no matter when made, before or after 1870; but presumption is different.

7435. He can only claim for others made since 1870; is not that the law?—Yes; that is so.

7436. Now, as to the presumption; the presumption is that all that were made since 1870 belong to him?—Yes.

7437. All that were made since 1870 belong to him?—I beg your pardon; the presumption goes a great deal further than that; first you started with the presumption.

7438. Take it as I put it to you; he can certainly claim for all since 1870?—Yes.

7439. Between 1850 and 1870 there is a different rule; he can claim for buildings and reclamation between 1850 and 1870?—Claim; but now presumption is a different thing.

7440. He can only claim for buildings and reclamation between 1850 and 1870?—Between 1850 and now; he can claim from 1850 to now.

7441. Twenty years before the passing of the Act?—Twenty years before the passing of the Act.

Mr. *Carson.*

7442. That is with regard to presumption, is it not?—Presumption.

7443. Presumption is one thing, and making a claim is another thing; presumption is a matter of doubt?—Yes, Mr. Sexton; if you will allow me to say so, I think you are mixing up the question of presumption with that of period within which the claim must be made.

Mr. *Sexton.*

7444. I am not indeed; you have laid down the question right; you have given an answer that would cover any claim for buildings and reclamation, no matter when done; nothing else but buildings and reclamation, unless done since 1870. Now let us go to the presumption, the proof?—Yes.

7445. Now in regard to the proof, the presumption is entirely in his favour since 1870; that is to say, that an improvement made since 1870 is presumed to belong to the tenant; is not that so?—I think so; of course it is presumed to belong to the tenant, and the presumption made before 1870 is a general rule.

7446. Cannot you take it as I give it you?—I cannot, unless it is correct.

7447. The presumption is since 1870, no matter what the improvement is?—Yes.

7448. Between 1850 and 1870 is he not limited by three principles: whether the landlord bought the estate with or without the improvement, whether the tenant held under a lease, whether the holding was valued at more than 100*l.*?—Yes.

7449. Before 1850, in the case of every improvement there is no presumption whatever?—If it is shown the improvement was made before 1870, that is so.

Chairman.

7450. If you can show that it was made before 1870?—If the landlord can show, or if it appears from the nature of the improvement that the improvement was made before 1850, there is no presumption on either side.

Mr. *Sexton.*

7451. Is not the peculiar effect of these time rules to defeat the presumption; I mean this, there is no presumption for the tenant before 1850, there is certain presumption between 1850 and 1870, there is unqualified presumption since 1870; but in order to avail himself of the presumption he has first to prove, as it were, that he held when the thing was made in order to bring himself within the time rule?—Well, no, I think not; the burden lies on the landlord.

7452. Is not there an unqualified presumption for improvements made since 1870?—Yes.

7453. But in order to entitle himself to that presumption he has to show that they were made since 1870?—No, he has to show what the improvements are; suppose they were made before 1850, there would be no presumption in his favour; it lies upon the landlord to show they were made before 1850.

7454. But if the tenant wants to claim presumption he must show the improvements were made since 1870?—Take a house, the simplest

Mr. *Sexton*—continued.

case; that rests upon presumption; if the landlord wishes to displace that presumption the burden lies upon him.

7455. In the rules of law it depends whether the presumption was made at one time or the other; whether the improvement was done at one time or the other, whether the tenant has the presumption; it alters according to the time; a thing done before 1850 has no presumption in favour of the tenant, a thing done after 1870 has?—A thing shown to be done before 1850.

7456. He has got to show when it was done?—No, the landlord has got to show that it was done before 1850, then the presumption ceases; the burden of proof lies upon the landlord until he displaces the presumption.

7457. Suppose the tenant wants to show it was done after 1870?—He has no difficulty in doing that.

7458. It is usual to show who does it you say?—That is the reason why it is that the question of presumption does not arise except with regard to buildings and reclamation; that is one reason.

7459. I suggest to you that these three terms of time, with different presumptions in each, works out in this; that the tenant really in order to entitle himself to presumption is put to the same proof as if no presumption existed?—Oh, no; it acts in a very different way with regard to buildings.

7460. Why, if you find improvements on the holding, should the tenant not be compensated for them?—What sort of improvements.

7461. Improvements of current value, improvements adding to the letting value; let us take some special thing, for instance, the drains; we go back to them?—No, he would prove the existence of the drains.

7462. I have already said where the thing is concealed it has to be proved?—What visible improvements are there, except the buildings when they are old.

7463. You fix a fair rent at what a solvent tenant would be able to give?—That is my idea; but Colonel Bayly has expounded another which I do not agree with.

7464. As much as a solvent tenant would be willing to give?—Would be willing to give and might be likely to continue able and willing to give. Rent is not like a sum of money paid down once for all, that being something that can be tested at once by what the man does give. Rent is promised, it is not a present consideration.

7465. The Act talks about the rent fixed to be paid by the sitting tenant?—It must be by the sitting tenant.

7466. The specific rights of the sitting tenant do not seem to you to indicate rents paid by him and no other?—Not the slightest. I do not know how such an Act could have been drawn differently.

7467. Two lines down you are asked to have regard to his interest; how do you interpret that?—I interpret it as meaning "to his improvements"; I do not know what other interest he has against the landlord for fixing the rent except his improvements; and there is no indication in the Act, as far as I can see, of any other suggestion but of his interest in the holding, in the popular sense, which he can sell.

Mr. *Sexton*—continued.

7468. His interest in the holding as tested by sale is often more valuable than that of the landlord?—Yes, but I do not see how that affects the landlord for the purpose of fixing rent, except so far as it includes the value of improvements.

7469. Improvements are dealt with in Sub-section 9 separately; you are told there that you are not to put any rent in his improvements?—Yes; quite so.

7470. Does the "interest" in Sub-section 1 mean nothing more than the "improvements" dealt with in Sub-section 9?—In my opinion that is all; I do not see any other indication of any other meaning.

7471. And is that also a duplication?—Yes; I suppose Sub-section 9 must answer that; I do not know.

7472. Suppose Sub-section 9 had not been there, you would then say merely the improvements?—Certainly.

7473. And Sub-section 9 being there, and you being told specifically there that no rent shall be allowed to be made payable for improvements, you think, nevertheless, the rights of the tenants' interest in Sub-section 1 means nothing more than that again?—I do not know what else it means.

7474. And you do not think that the legal revolution made by the Act of 1881 entitling the tenant to perpetual occupation marked any such difference in his interest as should affect the rent?—I do not, it gives him a saleable interest as between him and the landlord.

Mr. *Dillon.*

7475. You are a practical farmer?—Yes.

7476. You are described in the Return as farming 320 acres of land, partly as tenant and partly as owner; do you find farming a profitable occupation now?—No.

7477. Do you keep regular accounts?—Yes, pretty regular; not very exact.

7478. Could you tell the Committee whether you have made a profit out of your farming operations the last two or three years?—No, I have not.

7479. Have you spent much money upon improvements upon the farm?—Yes, a good deal.

7480. You have made no profit?—Well, on improvements; not improvements that would return much rent.

7481. But you have spent a good deal of your money on the farm?—Yes.

7482. Are you a landlord?—Yes, to a very small extent.

7483. About how many tenants have you?—About a dozen, I suppose.

7484. Have any of them gone into court?—No.

7485. Are you receiving full rents from your tenants?—No; I am giving them all abatements of 25 per cent. for some years.

7486. And are they paying regularly?—Paying regularly, no; in good years they pay pretty well, sometimes not.

7487. A good many of them must be in arrears then?—Yes.

7488. Do you think as a practical landlord that it is a good position (I ask you this question

in

Mr. *Dillon*—continued.

in reference to some evidence you have just given) for tenants to be in that uncertain state as to what their payments should be, because you said just now that abatements were given as a reason for settling out of court?—I think they sometimes like it better than having a fixed judicial rent.

7489. Your experience is that some of the tenants prefer to trust to the good will of their landlord rather than having it fixed in court?—Yes; for the reason that a great many landlords when a judicial rent is fixed stick to that; some give abatements if in their opinion the rent is too high, but some stick to it.

7490. It appears to set aside the passing of the Land Act altogether?—I do not say that all tenants prefer to trust to what abatements they will get, they do not; but I know that many do.

7491. This is a return giving the qualifications and experience of the various Land Commissioners before they were appointed, and I see you are described as a barrister farming 320 acres of land, but you are not mentioned as a landlord, and you are described in this column asking, "what other experience in agriculture." I suppose this is filled up by yourself?—Yes.

7492. The return in that column is "none." Do you consider that a landlord has no experience in agriculture?—I do.

7493. A landlord has no experience?—Not necessarily as a landlord; he may live in London, for instance.

7494. Do you think that a man ought to be entitled to fix rents on a body of tenants who has no experience or knowledge of agriculture?—I think not.

7495. You said just now that in fixing specified value you fixed a higher specified value in the case of small farms than in the case of large farms?—Yes.

7496. Why is that?—Because, as I have said, we have some regard to what the land would bring if put up to auction, and because we think, I suppose, that a man who has a small holding ought to be compensated for giving up his land if he is going away on a higher scale than a man who has a big holding.

7497. Would you apply the same principle in fixing rent?—No.

7498. You would not?—No.

7499. Then would you consider it a hard thing if you were compelled to pay a large rent or a considerable rent on your own holding when you were making no profit out of it?—Yes, but I am not living on my land, and no doubt I should make some profit if I was there; I am not farming under very favourable circumstances.

7500. Well you are spending money upon it?—That is for my own pleasure, just making fancy improvements.

7501. Now I want to clear my own mind, if it is possible, as to the method of fixing a fair rent; we have got a great deal of evidence upon that method, but still I do not feel quite clear about it. The Sub-Commissioners go out on the holdings with full instructions as to what improvements they are to hold to be the tenants?—Yes.

Mr. *Dillon*—continued.

7502. Then after careful inspection they fill a paper known as the pink return, which we have a copy of here. Now if one reads the pink return (you know the form, of course, and it is very detailed as to the character of the holding), the the impression given to my mind on reading the pink return is that it is a valuation of the holding as it stands with a record of the improvements?—I think there is no valuation in the pink report.

7503. I should rather say the base of the valuation of the holding as it stands?—Yes; there is something about improvements in it.

7504. I said "with a record of improvements"?—I beg your pardon.

7505. It is on that return that you fix the fair rent, is it not?—I do not say that; we fix the fair rent independently on the materials which are embodied in that return.

7506. That is my point?—And on further materials, such as the value of the improvements which are not included in that return; that is only a valuation.

7507. That only decides what you allow for the improvements?—Yes.

7508. Judging from that it would appear that a fair rent is what you consider to be a reasonable rent on the holding as it stands, with an allowance made for the tenants' improvements?—Yes.

7509. That is your definition of a fair rent. I think you said in a previous answer that you knew of no principles laid down for the fixing of a fair rent?—None that have been accepted; yes. There is a case (indeed I think it is Adams *v.* Dunseath) in which Mr. Litton laid down principles, but I think they were repudiated by the Court of Appeal.

7510. Then there are no authoritative principles?—Oh, no; it is essentially for a practical man, he must go out to value the land, and that is the end of it, so far as principle goes.

7511. Then it is simply a question of the discretion of each Commission?—Yes.

7512. Do you believe the members of each Commission act on the same principles?—Not exactly; there has been a very great difference I know; but as I have said to-day, there is a certain uniformity, not in principles, but in their estimation of the value of land.

7513. Can you give any explanation to the Committee of how that has been arrived at?—The explanation of the matter is that the Sub-Commissioners mix more; if two men get into a groove that is broken up by separating them; and some have been taken on to value for appeals.

7514. Then you think the result of Mr. Commissioner Fitzgerald's operation of mixing up the Sub-Commissioners has been that in the matter of appeals more uniformity has been arrived at?—I think very largely.

7515. This is the question to which I refer (2898), where you say: "I should say that I know of no 'principles'; if there are any I do not know where they are laid down. The Chief Commissioners have always refused to lay down any principles, and, of course, we have not laid down any general principles"?—I do not say

Mr. *Dillon*—continued.

that men do not give principles themselves on which they value, but I think they are never any good. I think the men that give most principles are not the men to trust most as valuers.

7516. Have you worked in the Province of Connaught?—Very little. I have been in Roscommon and in Galway.

7517. Have you had before you any of those bog or mountain holdings in the west?—Not "mountain" I think. In Galway I have had some of those cases off the coast of reclamation of bog between rocks.

7518. You said in one of your answers that in dealing with a reclamation case, assuming the tenant was able to prove the reclamation, what you did was this: you allowed him a reasonable percentage on his outlay, and then gave the rest to the landlord?—Yes, and I added to that that in most cases that would absorb the most of the increased letting value.

7519. Is it your experience that in the West of Ireland it would absorb far more than the present fair letting value of the holding?—That is what I said; that there is no margin

7520. You mistake my question: what I say is, would it not in the West of Ireland, in most of these holdings, absorb far more than the whole of the fair letting value of the holding as it stands?—The interest on the tenant's outlay.

7521. Yes; that is, giving him wages for the work he has done?—I cannot say that I know those holdings in the west; but I have seen very much the same sort in other places; I should say that probably it would.

7522. On what do you proceed then?—I think Colonel Bayly is right in one thing, that is in what he said about giving the original value to the landlord, and leaving all the rest of it to the tenant.

7523. He spoke of the improvability?—That is the same thing; you must remember as to the cut-out bog, if you estimated the return it brings in it is nothing; the whole value of it is for the purpose of reclamation.

7524. Do you hold that land has inherent improvability or value in cases where it cannot be reclaimed on commercial principles; that is to say, where it would not pay to reclaim it by hired labour?—I should say it has no value there.

7525. Do not you believe that that is the case with a great many of these holdings in the west?—I cannot say that.

7526. Would you undertake to reclaim them by hired labour?—You must show me the holdings. I have seen bogs that have a substantial value; 10*s.* an Irish acre, for instance.

7527. They would be worth that?—They would be worth that to reclaim; they have an inherent capacity which makes them worth that for the purpose of reclamation.

7528. How are even reclamation tenants to prove the reclamation if it was done at a period when no living person can speak of his own knowledge of it; is there any way by which they can prove it?—The presumption that the improvements were made by the tenant would act there.

7529. Not according to the law as I have heard it given here?—I do not know what displaces the presumption.

Mr. *Dillon*—continued.

7530. I understood that the law was that there was no presumption before 1850?—Yes, and it lies on the landlord to show that it was made before 1850.

7531. Suppose you go on the land and find this reclamation done; do you assume that it is made since 1850?—We assume that it is made by the tenant or his predecessors, unless the landlord shows that it was made before 1850.

7532. You do?—Yes; there is no question, so far as I have seen, of that sort about reclamation of bog.

7533. The evidence we have here goes to show that there is nothing for it unless the tenant is able to prove it?—I think the tenants get full value for that sort of thing; the only question arises on good mountain land, where there is valuable reclamation; there it may arise sometimes.

7534. Can you throw any light upon the various definitions of rents we have had here; we have had here one Sub-Commissioner speaking of an "economic" rent, for instance?—I cannot; not the slightest. I do not know what anyone means by "economic rent," by "competitive rent," or any of those things.

7535. If that be so on what principle do you fix the rent?—I say the rent ought to be fixed, so far as the valuation of the land is concerned, on the sum which a man could give as rent who was a solvent man and an industrious man, and likely to continue to pay that rent.

7536. Take your own experience, which you give us as a practical landlord as well as a practical farmer; you have to give abatements to your tenants to enable them to pay their rents according to your own definition and explanation?—I did not say that.

7537. We must not presume that it is pure philanthropy, they do not pay; they obtain reductions of 25 per cent., and according to your statement, even with that reduction, they do not pay you regularly. Surely you must have in your mind, which you could put into words, the principle on which you fix fair rent as distinguished from competition rent. Perhaps you forgot that you defined a competition rent?—That, I think, was in reply to a previous question?

7538. Yes?—Yes.

7539. You defined a competition rent as an exorbitant and ridiculous rent which nobody would pay?—I said some people spoke of doing so, and that I really did not know what they meant by it.

7540. You said that there was an "exorbitant and ridiculous rent which nobody would pay"?—Yes, that may be.

7541. That is a very fair definition of "competition rent," is it?—I do not know. I do not think it is really. I think the only reasonable meaning of "competition rent" is what somebody will pay; what a reasonable man of reasonable industry and skill will be likely to continue to pay.

7542. Then it appears to me that the fair rent you fix is a competition rent?—If you take it in that sense.

7543. I do

Mr. *Dillon*—continued.

7543. I do not take it "in that sense"?—In what sense do you take it?

7544. Competition between solvent men?—Yes, I think so.

Mr. *T. W. Russell.*

7545. You stated in reply to Mr. Brodrick the last day that you had fixed some rents where agreements had been arrived at between landlord and tenant?—Yes.

7546. You stated that you were unable to give the Committee the percentage of reduction that you had made in those cases?—Yes.

7547. Could you do for the Committee what Mr. Bailey did in his cases at the same time?—I do not think I could.

7548. Stop until you hear me put the question, Could you do for the Committee what Mr. Bailey did in those cases, that is, give a return. Mr. Bailey has handed in 39 cases?—I am afraid I could not. Latterly I do not think I have taken a note of those cases; there has been an agreement signed, but not filed. At first I took a note, because some discussion arose as to whether the tenant was not bound by it; but I do not think latterly I could find a note of all those cases in which an agreement was signed.

7549. Do you think you could not find any of them for us?—I could find some of them, I think, but not latterly. There were considerable reductions made.

7550. But the Committee cannot go upon a statement like that. If you could prepare a return of some cases that you could find conveniently we should be very much obliged?—That I can try to do.

7551. You have been engaged mainly in the south, I think, fixing rents?—Yes.

7552. Did you ever meet a document called "the Leinster lease"?—No.

7553. You never did?—No.

7554. That is a popular name?—Those are leases on the estate of the Duke of Leinster you mean.

7555. Is it not the case that under the Act of 1870 tenants whose valuation was over 50*l.* were allowed to contract themselves out of the Act?—Yes.

7556. Is it not the case that on some estates in the south of Ireland that course was followed?—Yes, in a great many cases.

7557. Is it not a fact that leases originally drawn up for the Leinster estate became rather general over the south of Ireland?—I cannot answer that; I do not know.

7558. Did you know of a case where the leaseholder came into court under the Act of 1887, whose lease was taken out under the circumstances that I have described, and who, when he came to get his rent fixed under the Act of 1887, found the whole of his improvements confiscated?—Oh, yes, several cases.

7559. Well, that is what I mean by the "Leinster lease." You have known of several cases?—Yes, where the tenant had contracted not to claim for improvements.

7560. Under that clause in the Act of 1870?—Yes.

Mr. *T. W. Russell*—continued.

7561. You have known of several cases?—Yes.

7562. Under your own experience?—Oh, yes.

7563. Did you ever sit in King's County?—Yes.

7564. Do you remember hearing a case where a man's lease expired on the 1st May, 1881, three months before the Act of 1881 became law?—Could you give me the name of the case, then perhaps I might remember it. I may remember it if I know the name; I shall not remember it unless I hear the name.

7565. I will read the letter, and I will give the name if it is desired. The writer says: "My lease expired 1st May, 1881. I was served with an ejectment and decree obtained for possession. Under stress of this, I agreed for a new lease towards the end of the year 1881, but my landlord insisted it should run from the 1st May, 1881." Do you remember the case of that man in King's County coming before you?—No, I do not. I have so many cases coming before me that certainly I cannot remember it without the name, and even with the name I cannot remember it perhaps.

7566. My point is this, that the landlord insisted that the new lease should date after the passing of the Act of 1881, although the tenancy absolutely expired on the 1st of May, before the Act came into operation, and on that technical point the Sub-Commission Court ruled the tenant out?—I presume they did, because there was evidently no tenancy existing at the passing of the Act.

7567. By a quibble?—It is a very substantial "quibble" if the man was turned out.

7568. He was not turned out?—I do not call that a "quibble"; he turned him out.

7569. Now on the question of presumption: is it fair to divide the classes of improvements in this way: first, improvements which add to the value of the holding as an equipped farm, namely, buildings, fences, and roads; and, second, improvements which affect the productive capacity of the soil, such as drains?—Yes, I think so.

7570. Now, would you say that the presumption as regards the first class of improvements (that is, as regards visible improvements) is in favour of the tenant?—Yes, subject, of course, to the exceptions in the Act.

7571. And that, as regards the second, of course proof has to be given of those, because you have to look for them; is that what you mean?—That is what I mean; the presumption is the same, technically. Practically it is of no consequence, because proof has to be given.

Mr. *Carson.*

7572. In your experience did you find, as a rule, to any extent that any improvements which in your mind you were satisfied must have been made during the tenancy were given to the landlord?—Oh, yes; in cases where the tenant could not claim under the Act of 1870.

7573. I mean by want of presumption?—Yes;

Mr. *Carson*—continued.

Yes; I have met with cases of that sort with regard to houses.

7574. Were there many of such cases?—Not very many.

7575. And, as I understand, as regards the houses, if you saw from the nature of the house that it must have been made since the tenancy commenced, either by the individual tenant or his predecessor in title, you would hold that to be the tenant's?—Yes.

7576. Therefore in the cases which you referred to, in which these were given to the landlord, they must have been of very old standing?—Oh, yes, they were; they were generally old thatched houses.

7577. And you were not satisfied that they were made during the existence of the tenancy?—Yes, exactly. It was proved that some of them were there before 1850, or before the existence of the tenancy. If they were made before the tenant or his predecessor's occupation, they would belong to the landlord.

7578. Is that another reason for which you allowed them to the landlord?—No, I think it is a case in which the presumption was displaced by proving that they were made before 1850.

7579. Were there many of this kind of cases?—Not very many.

7580. As a rule do you find in your experience that the landlords try to claim improvements made by the tenants?—No; as a rule they begin by saying they do not claim buildings unless they have some specific claims on the ground of contributions or something of that sort.

7581. That I believe is one of the first questions you ask them?—Yes.

7582. I think I may take it that you do not consider this question of presumption of any importance, or of any very great importance?—Well, with regard to buildings it has acted hardly on the tenants in some cases; of course in these cases the buildings are very old and not worth much, and I have known cases in which it has acted hardly against landlords.

7583. Sometimes I suppose the landlord has not been able to prove within the presumption period?—He has not been able to prove at all, and the tenant relies on his presumption, and we are obliged to exempt the building from rent, although morally certain that they have been built by the landlord.

Mr. *Dillon.*

7584. You have been speaking of buildings where the presumption is displaced by proving that they were made before 1850; now is that the law; because according to the law as we have it laid down here before us already in a paper handed in by Mr. Bailey: "A tenant, not subject to the Ulster custom, on having a fair rent fixed, is not entitled to exemption from rent on his improvements in the following cases. (1.) Where the improvements were made 20 years before the claim, and before August 1st, 1870, except permanent buildings and reclamation of waste lands"?—You are again mixing up the question of the right to exemption from rent with the question of presumption.

Mr. *Dillon*—continued.

7585. Then there is no presumption even in favour of permanent buildings before 1850?—No.

Mr. *Carson.*

7586. He can claim, of course, to have building improvements exempted if they are made at any time, but the presumption is a different matter; is that so?—Yes, that is so.

7587. You have been asked with regard to what has been called by the Committee the "unearned increment"; that is, the balance of the increased letting value over and above the percentage that you give to the tenant; do I understand your evidence to be that in the cases that have come before you you have not found the existence of this sum to give away to anybody?—Yes, that is so, except in a few cases of reclamation of mountain, where, as I say, the thing was provided for by the contract between the parties.

7588. In other words, where the letting was made with a view to the reclamation?—Yes.

7589. With reference to tillage and manures, I suppose in the case of reclamation you take the expense of tilling and manuring into consideration; I mean in estimating what the reclamation would cost?—I think that is generally taken into account.

7590. You allow so much per acre for the reclamation?—The principal work of reclamation, if it is a case of bog, is draining if it has to be drained, and levelling if it has to be levelled, removing stumps of trees and stones, and tilling and manuring.

7591. As regards this question of the specified value, are you aware that in Adams *v.* Dunseath the Master of the Rolls, Sir Edward Sullivan, said, "This value cannot be the market value, but what, having regard to the interest of landlord and tenant respectively under this code, would be the true estimate of price between them." Is that the principle upon which you have acted?—Yes.

7592. Supposing a new tenant coming in and purchasing from an outgoing tenant was to purchase at the competitive or market value, what would be the advantage in fixing a fair rent at all?—Well, if he pays a full value for the reduction, there is no advantage in coming into court; it is eaten up.

7593. He would be as badly off as the other man was before the rent was fixed?—Yes; all the advantage is eaten up by the man in occupation in 1881, or his descendants.

7594. Have you acted upon the view that the object of the Legislature in allowing this specified value to be fixed at all was, as far as possible, to keep a fair rent being paid out of the holding?—You mean to keep down the purchase by an incoming tenant?

7595. No, to prevent tenants, when they agreed for land, paying more than the holding was worth?—No, I do not think we have taken that into account; I think we have merely considered what is fair for the landlord to pay to get back the farm. I do not think we have considered it with a view to his holding it or to the incoming tenant having less to pay.

Mr. *Carson*—continued.

7596. Does it not occur to you that the object of the Legislature was that the tenant should not come, even in the case of a settlement, into the danger of having to give too much for the land?—I think, as Mr. Sexton said, the landlord might get him to pay a fine to put into his own pocket.

7597. He cannot get it until the 15 years from the passing of the Act expires, can he?—He cannot get it until the 15 years expires.

7598. Supposing he paid the fine within the 15 years, then the tenant would have a right to apply to have a fair rent fixed, and you would have a right to consider that fine, would you not?—No, I do not think we should consider it.

7599. A fine paid directly to the landlord?—I do not think we should consider it.

7600. Do you say you would not consider it?—Yes. That has been laid down in Kieran *v.* Mollan.

7601. You would not consider a fine paid to the landlord in any case?—Not in every case.

7602. Have you ever had a case of tenants coming in after having taken land from the landlord, where the landlord has exercised his right of pre-emption?—No.

7603. You have not had a case of that kind?—No.

7604. You do not know of any such case having happened?—No.

7605. Mr. Sexton asked you whether a tenant had not to go through these various points of exclusion when he came in, whether pastoral or residential, or demesne land; as a matter of practice are these various questions put to the tenant?—No, it is left to the landlord to raise these points if he wants to.

7606. Is not the presumption when the relation of landlord and tenant exists in relation to the agricultural holding that until the contrary is shown it is within the Act?—I do not know whether it is legally so, but we do presume that.

7607. It is one of the definitions?—He is presumed to be a "present tenant."

7608. Do you as a matter of practice, if you find an agricultural farm at the passing of the Act, assume that that is a case within the Act until the contrary is shown?—Yes.

7609. Then it would lie upon the landlord to take it out of the Act?—Yes; of course the tenant very often anticipates that in his own case, and proves that he is within the Act.

7610. Is the landlord bound under any of these rules (I do not recollect them all now) to give any notice if he is going to rest upon the exclusions?—No, not before us; before the rehearing before the Chief Commissioners he is bound to give notice.

Mr. *M'Cartan.*

7611. Under what rule?—I am not sure that it is printed, but there is such a rule in practice.

7612. There is no such rule in print or in practice; I have some experience of the fact?—There is such a rule acted upon.

Mr. *Carson.*

7613. Do you think the landlord should be bound to give notice of his intention to prove that the holding is excluded from the Act?—No, I do not think so; I think it is perfectly well known what points are going to be raised by the tenant.

Mr. *M'Cartan.*

7614. I think some time ago instructions were sent down by the Land Commission stating that the parties were to mention whether it was on a point of law or on a point of value that they were proceeding; is not that so?—Yes, I beg your pardon, that may be so.

7615. And that is paid no attention to?—Oh, yes it is.

Mr. *Carson.*

7616. What is that you are alluding to?—There is a rule about the re-hearing.

7617. That is only with reference to the Court of Appeal?—Yes, that is all.

7618. Can you suggest to the Committee any better method of fixing or refixing the rents than the present existing one?—Well, no, except as I have said before and as Mr. Bailey suggested, that in simple cases where there is no dispute requiring to be heard in court the thing might be done by a valuation on the land, leaving the parties to raise any question afterwards in court.

7619. That would practically get rid of the simple cases before the Sub-Commission?—Yes, if the parties are satisfied with it; that I cannot predict. They have not taken much advantage of the rule about arbitration. They can apply to have the Land Commissioners send down two arbitrators to fix the rents, and they have not taken much advantage of that.

7620. Can you give us any idea at all why they have not taken more advantage of that?—I really cannot.

7621. Do you know that they refer to outside agreement or arbitration at all, that is outside the Land Commission?—A very large number of rents have been settled by outside valuation.

7622. Outside valuation?—Outside valuation; oh, yes.

7623. That is, the landlord and tenant agree to appoint a valuer who would go out and value the land?—I think the more general way is that the landlord did employ a valuer who made the valuation of the land at a certain rent to the tenant, and in a great number of cases I think whole estates were settled in that way except the cases which, if the men did not agree, came into court.

7624. Did they file the agreements?—Many of these were cases in which the agreements were not filed; in many cases they were filed.

7625. Except what you state you agree with Mr. Bailey as to the simple cases; are there any improvements in the administration of the Acts (the working of them) that you can suggest to us; I mean in the procedure?—No, I do not know that there are.

7626. You think, upon the whole, that it is as well now as it can be?—I know it is very expensive and cumbrous, but I do not think people would

Mr. *Carson*—continued.

would be satisfied really unless they had their cases heard in court in general.

7627. They are fond of the luxury of the law?—Some of them are, but some of them are very reluctant, as I have said, to go into court; you cannot lay down a general rule for everybody.

7628. Can you tell me whether you have found, as a rule, the pasture land more highly rented in proportion to its value than tillage land?—No, I do not think so.

7629. Or *vice versâ*?—Good pasture land was, I think, rented cheaper in proportion to its value than poor tillage land; very much.

7630. And these reductions or falls in the value from 1879 to 1885, and 1885 on, did they affect these pasture lands as much as the tillage lands?—I should say not so much, not at all.

7631. Is there at the present time any tendency, so far as you observe, to any further fall in the dairy lands?—Dairy lands!

7632. Pasture lands?—Dairy lands are a different class to fattening lands. I do not think this is a good year for dairy lands; the price of butter has not been very good.

7633. Grazing lands?—Grazing lands this year, I have heard, have brought more in Meath, letting for the season, than they did last year and the year before. That, however, depends very much on the state of the market for store cattle.

7634. Could you give me any idea at all as to what percentage of the cases that came before you were dismissed upon points outside the Act and held to be outside the Act?—No; I could give no idea of the percentage.

7635. Were there many cases?—No, not a large percentage.

7636. Would there be 5 per cent.?—Dismissed?

Mr. *Carson*—continued.

7637. Yes?—No, I do not think so; oh, no.

7638. Not 5 per cent.?—I think not.

7639. Four per cent.?—I really could not say.

Mr. *Clancy.*

7640. You were speaking, I think, about fixing the specified value, and you said that although you took evidence you did not rely upon it?—We were not bound by it.

7641. Your expression was that you did not rely upon it?—What I meant was that we did not rely upon it exclusively. We fix the fair rents very much on the practice of the Sub-Commissioners.

7642. Should I go too far in saying that the hearing in court is a farce?—I would not say that. There are some cases in which we are very glad to have the evidence of good men, skilled persons from the district; that is to say, men who can give good evidence.

7643. And some of them you say you pay no attention to the evidence they give?—Evidence of value; I do not refer to anything else.

7644. Do you ever receive instructions from the head Commission?—No, not as to fixing rents.

7645. Do you ever receive circulars of any sort from the head Commission?—Yes, several circulars.

7646. What have they reference to?—Things like when the vacation begins, and so on; matters of detail.

7647. Do they ever call your attention to the number of cases remaining in court?—No.

7648. You do not remember a circular issued about the year 1886 in reference to the number of cases in Ireland?—I do not; there may have been one, but I do not remember it.

Mr. Thomas Roberts, called in; and Examined.

Chairman.

7649. You are an Assistant Lay Commissioner?—Yes.

7650. How long have you been in that office? I was first appointed in 1882 as a valuer for the Court of Appeal, and with the exception of two short breaks I continued as a valuer up to the end of 1884.

7651. By a valuer do you mean an assistant lay Commissioner?—An assistant lay Commissioner up to nearly the end of 1884. Early in 1885 (or some time immediately after the passing of the Ashbourne Act), I was appointed an inspector under the Ashbourne Purchase Act up to 1888. Early in 1889 I was appointed as an Assistant Commissioner to sit in court up to March 1890, when I was sent as an Appeal Court valuer, in which office I continued to act until the end of the last year.

7652. And since then what have you been doing?—I have since then got only a few cases from the Land Commission, owing to the want of work. I am only a temporary assistant Commissioner appointed annually; owing to the "65" years rule under the Civil Service I could not have got a permanent appointment.

Chairman—continued.

7653. Now will you tell us what your experience in agriculture and farming has been, either in Ireland or anywhere else?—Over 40 years past I took a farm of about 250 acres in the county of Roscommon; I have farmed it since, and I still hold it. During the first 15 years of that period I carried out a good deal of drainage and tillage on the farm; since then I have had it all in grass.

7654. That is to say, you have had experience both of tillage farming and of grass farming in your own proper person?—Yes; and for over 20 years I acted as sub-agent of several large estates in the county of Roscommon.

Mr. *T. W. Russell.*

7655. What estates?—The Strokestown Estate, and other estates I also had to attend to. In that period of 20 years very large drainage works were carried out under my direction on some of these estates, particularly on the Strokestown Estate.

7656. You

Chairman.

7656. You have had various legal Chairmen, no doubt; or have you been always, or principally, under one?—Principally under Mr. Kane, and for a very short time, Mr. Edge and Mr. Doyle. I do not know that I was under any other legal Commissioner.

7657. And you are now a temporary lay Commissioner employed from time to time when they find the necessity for your assistance?—I have only been employed on a few occasions since the 1st January last owing to want of work; the permanent Commissioners must first get the work, and when there was work for temporary Commissioners outside the appointment of the permanent men I have got some then; and at present I am engaged (with the consent of the Commissioners) by the Board of Works as a valuer for some 20,000 acres of land in the vicinity of the Suck, which forms the boundary between Roscommon and Galway. There is a very large drainage carried out there by a Drainage Board.

7658. That has nothing to do with our inquiry; I may take it, generally, that since 1882 you have been pretty steadily employed, either as Assistant Lay Commissioner or as appeal valuer?—Yes, that is so.

Mr. *T. W. Russell.*

7659. Do you think that the rents that were fixed between 1881 and 1887 would stand revision now?—I think the rents fixed between 1882 (or about that time when I joined the Commission) up to 1884 or 1885 would be reduced if they were in court now. At that time, though great attention might have been paid by the assistant Commissioners to the valuing of lands, they were not supplied with maps. Maps did not become general until 1888. Of course we, as court valuers at that time (there were, I think, eight or ten on the staff), were supplied with maps, as the parties lodging the appeals were obliged to provide maps.

7660. May I take this from you, that in the early years of the Land Commission your opinion is that if the rents fixed then came into court now they would be subject to reduction?—I think they would.

7661. And that would be due to a fall in prices?—To a fall in prices, principally.

7662. And cost of labour?—And cost of labour. The wages have gone up very considerably since.

7663. Following that, may I ask you whether in view of the fluctuation of prices it does not strike you that the statutory period is too long; the statutory period of 15 years?—I think that it is.

7664. Are you aware that the Scotch period in the Crofters' Act is seven years?—Yes, I have heard so.

7665. Does it not strike you that 15 years is rather a long average for men engaged in fixing rents to look forward to as regards prices?—I would be disposed to favour a shorter term.

7666. Have you any experience of the matter of sub-letting depriving tenants of the benefit of the Act?—I cannot call any to mind when I sat in court to hear cases as Assistant Commissioner; but I met with cases subsequently when I went out to value farms, at least I heard of them.

Mr. *T. W. Russell*—continued.

7667. I will take your general knowledge on this point. Take a farm which has not come into court, where the landlord has received the rent for many years without any protest as regards the sub-letting (it comes into court now), the landlord objects on the ground of sub-letting, and puts the tenant out of court; do you think that in such a case as that, where the landlord had assented and never raised any objection to the sub-letting, it is not rather hard that that tenant should be shut out of court when he comes in to have the rent fixed?—I think unless the sub-letting was made with the consent of the landlord there would not be hardship in it; but in this instance there would be hardship. Sub-tenants have frequently got rents fixed as against the tenant; I think there is a hardship there.

7668. You say that the sub-tenant can get his rent fixed as against the tenant?—Yes, and has got it done.

7669. But you are aware that while he can get his rent fixed he cannot get a legal term; and that, therefore, the sub-tenant is completely at the mercy of the tenant, notwithstanding the fixing of a rent; is not that so?—I believe so.

7670. You will see, that being the law (unfortunately it is the law, you may take it from me), while a sub-tenant can get his rent fixed, you say that has occurred in a few cases, he can get no statutory period, and is no further forward. You have said that you think the consent of the landlord ought to be essential?—I think so.

7671. Do you mean by the consent of the landlord a written consent or an assent in some legal form?—Either written or verbal, if written it should be the consent of the landlord or the agent to sub-let to a reasonable extent. I mean what I call a small sub-letting for labourers' cottages, such as would be required on the farm. I think the tenant ought not to be excluded from the benefit of the Land Act if the farm is a reasonable size; but if the man only held two or three acres, and let off half of that it would make a very considerable difference.

7672. Still that is not the point I am wanting to get at. I am taking a case where the landlord has been aware of the sub-letting in the past, has raised no objection to it, and may, therefore, be taken to have assented to it; he has taken his rent without saying that his interests were at all injured by the sub-letting; do you think the landlord ought to be allowed to raise the question of sub-letting when the tenant goes into court to get a fair rent fixed under those circumstances?—I have not considered the matter in that way.

Colonel *Waring.*

7673. Have you any precise or uniform method of going about valuing and forming your idea of value?—Only from my experience, extending over the very long time of 40 years in farming and in coming in contact with all sorts of farming, large and small.

7674. You do not consider the amount per acre of any given crop the land would produce,

Colonel *Waring*—continued.

and the value of that, and go into a calculation of that kind?—Yes, I consider the producing powers of the land, of course, not the proportion in which I would apportion the produce as rent on small holdings.

7675. That is too variable for you to give any general opinion?—I could not do it. I form the best opinion I can of a fair and reasonable rent.

7676. How do you arrive at the increased letting value occasioned by an improvement?—In drainage the general rule is to allow 5 per cent. on the estimated expenditure of what the work would have cost, not upon what the tenant claims as the cost, nor what it would probably cost him when labour was cheap, but at a fair estimated value of it at the present time. Generally speaking in the great majority of cases that allowance covers what I consider the improvement in the land.

7677. Then the improvements are not often worth more than the cost, I take it?—Not frequently, and very often not worth what they cost nor what was estimated for and put before the court.

7678. Do you find that the tenants have any great difficulty in proving the improvements?—No. As a court valuer I have had no opportunity; but for the short time that I was sitting in court I cannot call to my mind that there was any difficulty about it.

7679. Then you would not be able to say much about that?—No, I would not be able to say much on that point.

7680. Can you tell us anything on the subject of land being deteriorated by bad cultivation, or neglect of cultivation?—I have met some instances of it, particularly arising from over-cropping or over-meadowing.

7681. Do you find any difficulty then in estimating what ought to be done with the rent?—No, I would put on such a rent as I think the tenant could fairly pay for the land under ordinary farming or good farming.

7682. That is before it had been so deteriorated?—Yes.

7683. In fact you imagine the land back in the state in which it was, even if properly and fairly farmed, before the tenant commenced to run it out?—Yes.

7684. Have you had much to do with grazing farms?—Yes, I am familiar with them, and my own farm is a grazing farm.

7685. The class of tenants who generally hold grazing farms are men who have got fairly good business ideas, are not they?—Yes; generally speaking they are men who know how to take care of themselves.

7686. I was just going to ask you as to that; to use a common expression they are men who are "fit to go alone"?—They are called in the West of Ireland graziers; they occupy large grass farms, residing upon one of them, holding several, and they seldom or never expend any money in any improvement of the farms.

7687. On the question of prices; it is admitted that store cattle have fallen since 1870; what is the position of prices now?—The prices are very low, or have been lately, for store cattle.

7688. Do you happen to know what the state of the market is at present?—Low.

7689. Low?—For store cattle at present.

7690. What class of stores?—There is a low price for beef. The price for beef must rule the price for store cattle; when the price of beef is low the price of store cattle must be low.

7691. Has there been much change in the cost of production?—Yes. In tillage farming you mean?

7692. Yes?—Yes, considerable; the wages have gone up very much.

7693. You are talking now of your own district of the country, I suppose?—I am talking of Ireland generally. I have been over a great part of it; I have been in every county in Ireland.

7694. In every county?—I have. I did very little business in the north. My business was principally confined to Munster and Leinster.

7695. What is your opinion of the relationship between a competition rent and a fair rent?—I should think about 25 per cent. difference.

7696. Do you accept Mr. Doyle's definition of a competition rent, which you heard him give just now?—I should rather give a definition of my own.

7697. What is your definition?—A competition rent is a rent that if the farm were in the market now would be given by a solvent tenant intending to pay it. Competition rents sometimes go over what can be paid, and then possibly the tenant comes in very soon to look for a reduction, and say he cannot pay the rent.

7698. I do not perceive much difference between that and Mr. Doyle's definition?—I did not, perhaps, pay sufficient attention to his; I did not hear him very well; he had his back to me.

7699. Do you see any good reason why the landlord and tenant should not agree out of court without the intervention of the Commissioners?—I see no reason for it, but I think that rents could be settled in a great many cases without the tenants coming into court again where they have already got judicial rents fixed. Where they have not got them fixed I should think it much better that they should go into court, if I may be allowed to offer an opinion. Where rents have already been judicially fixed, I see nothing to prevent, in order to save litigation, expense, and trouble, having these rents revised and re-adjusted; but where they have not gone into court I would not suggest such a course; I would think it better that they should go into court.

Mr. *Dillon.*

7700. You are a practical farmer yourself?—Yes.

7701. I think you said you had been farming some farm for 40 years?—Over 40 years.

7702. In the county of Roscommon?—Yes.

7703. Do you find farming a profitable occupation?—I should rather not answer that question. I want to dispose of my interest in the farm.

7704. As to this question, how do your profits compare

Mr. *Dillon*—continued.

compare now with your profits of 20 years ago?—Well, if I have to sell cheaper, I buy cheaper now, but 20 years ago I had more profit than I have had latterly. I buy store stock and I sell them either as fat, or approaching to fat.

7705. Your farm is a fattening farm?—No, the whole of it is not; part of it is.

7706. You have spoken of the grazing tenants, Roscommon?—In Roscommon principally, and in Meath, Tipperary, and Limerick.

7707. You are acquainted with Ireland generally?—I am acquainted with Ireland generally.

7708. Are they doing well lately?—I know some graziers report that they have done very well; an assistant Commissioner told me that he bought stock in the last 12 months, and that they had doubled in price.

7709. I am not talking of individual prices; would you say that the tenants of Roscommon have done well the last 10 or 12 years?—I would say not as well as formerly.

7710. What counties have you worked in?—Principally in Munster, partly in Leinster.

7711. Not in Connaught?—Not so much in Connaught.

7712. Have you had much to do with reclamation cases in Connaught?—In most of the counties I have had to do with reclamation cases; they have consisted chiefly of small reclamations made by small tenants on soils off which the peat had been removed for fuel.

7713. Have you had a great number of these cases before you?—A great number.

7714. In the province of Connaught?—A good many in Connaught, and a good many elsewhere.

7715. There are a good many of these cases in Roscommon, are there not?—There are.

7716. Will you describe to me the principles; do you know of any principles that guide you in fixing fair rents?—None but my knowledge of farming generally.

7717. But you have no principle laid down to guide you?—No fixed principle.

7718. It is left to your own discretion?—Left entirely to my own judgment and experience.

7719. You acted as a lay Commissioner?—Yes.

7720. When you go out on to a farm you have got directions as to the ownership of the improvements?—Yes; I have got on the schedule put before me from the Sub-Commission Court the improvements that have been taken into consideration.

7721. Now, will you describe to the Committee the mental operation by which you arrive at a fair rent; what is present to your mind in fixing a fair rent?—The capabilities of the land; its producing powers; its situation as regards markets; its position as to elevation and aspect; prices of produce; and increased price of labour; these are the principal elements.

7722. You practically value the holding as you find it?—I value the holding as I find it as regards the land.

7723. And you fix a fair rent on that?—I fix a fair rent on that to the best of my judgment.

7724. Of course, you then deduct from that valuation in allowance for improvements?—Yes.

7725. And that is the fair rent?—That is the fair rent, having considered those matters I have told you, taxation, and all the other elements that affect the question.

7726. We had a curious answer here given touching upon an expression which has been frequently used in the discussion of the Irish land question, that is, as to the "prairie value" of Ireland. The expression "prairie value" has been used, I dare say you have seen it yourself in the newspapers, as descriptive of Ireland in the state of nature. The last Sub-Commissioner who gave us evidence said (I will just read you the answer): "I do not know what the condition of Ireland was when in prairie; I should think a great deal of it was much better than it is now, because then it was not exhausted." Do you consider that Ireland in the state of nature was in a much better state than it is in now; do you agree in that view?—I should think it was not.

7727. I was curious to have your opinion upon that, because it is a very striking opinion that is given there; I myself have been denounced for wishing to rob the Irish landlords by taking land at "prairie value"; now we have it on the authority of a Commissioner that it would increase the rents if we gave "prairie value"?—When it was in that prairie state is a long time back.

7728. You have stated that you are familiar with the best farming in England?—Yes.

7729. You have lived, I suppose, in England?—No, but I visited the country some 40 years ago frequently.

7730. Have you any knowledge of the present condition of England's agriculture?—Only from what I have heard and read.

7731. Can you say from your own experience how the amount of capital expended on the English farms by the landlords compares with the amount spent by landlords on Irish farms?—I am not able to say.

7732. I thought you said you were familiar with the best farming in England?—Yes, I go back 40 years, and at that time all the improvements I came in contact with in England on some of the best farms were all made by the landlords.

Mr. *Macartney.*

7733. I think you have fixed rents in County Longford?—Yes, it is the first county I sat in with my colleague under Mr. Kane.

7734. Do you remember fixing rents upon a property owned by Mrs. Archdon?—I cannot call it to my mind now.

7735. The reason I asked you was this, I thought perhaps you might recollect it: A considerable sum had been spent by the present owner of the estate, a sum of 13,000*l.*, since 1879 (beginning in 1879), in drainage and other improvements upon the property. I have a list of about 215 tenants here on whose farms this sum was spent, the whole of this 13,000*l.* being paid by the landlord, and no charge made upon the tenants?—I do not recollect the cases.

Mr. *Macartney*—continued.

7736. If you do not recollect the specific instance I will now assume a case: Assuming that a landlord had spent 13,000*l.* on a certain number of farms, in fixing fair rents do you take that into consideration?—If it was spent judiciously he has got the advantage of it in fixing a fair rent; if spent in buildings he is allowed a rent upon the buildings.

7737. When you go upon the farm for the purpose of estimating the rent which it will bear, may I take it that in dealing with the tenant's improvements which he has claimed and proved in court it has been your practice to protect those improvements (to use a popular word) from confiscation by the renting of the improvements?—Certainly.

7738. That is the general rule you act upon?—Certainly.

Friday, 6th July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. THOMAS ROBERTS, re-called; and further Examined.

Mr. *Macartney.*

7739. Now, putting aside the amount of improvements upon which some legal question has arisen in the court, was it the practice of the legal Commissioners with whom you acted to leave you entirely unfettered in your judgment as to how you should deal with the improvements which you found on the farm?—It was. Mr. Kane was the chairman with whom I chiefly acted as legal Commissioner.

7740. But I believe you have acted with other legal Commissioners?—For a very short time with Mr. Edge and Mr. Doyle.

7741. But both those gentlemen left you absolutely unfettered?—Absolutely unfettered as regards the improvements proved in court.

7742. Of course if any legal question arose as to whether the tenant could claim them or the landlord, you received a direction upon the question, I presume, from the legal Commissioner?—Yes, from the legal Commissioner.

7743. In putting their claim for improvements before the court, I take it as a general practice that the tenants had the assistance of surveyors, or of some other expert witnesses?—Generally speaking, evidence was given of the extent of the improvement, the number of perches of covered drainage, the number of perches of open drainage, and so on; that was generally given, but not evidence of reclamation, because it has been assumed in many cases to have been made a long time before, and that evidence could not be given of it.

7744. But with regard to drainage, fencing, or road-making?—Generally speaking, measurements were given, either by the tenants or by someone on his behalf.

7745. Is it the practice also for the tenants to produce a valuer to speak to the value?—Yes, and the landlord.

7746. And the landlord; both, of course. It is a very considerable profession in Ireland, I should think now, is it not, that of valuer?—Yes, some men have made it their business altogether.

Mr. *Macartney*—continued.

7747. I take it that there is generally a very considerable discrepancy between the valuations, is there not?—Yes; on both sides.

7748. On both sides?—Generally speaking, one is very high and the other very low, and occasionally they come near to what we consider would be the fair value.

7749. But you exercise an independent judgment?—We exercise an independent judgment. I was only a short time acting as Assistant Commissioner; latterly I have been valuer for the Court of Appeal altogether for some years, but during the time I was Assistant Commissioner I confess I did not pay very much attention to the evidence of the valuers as regards the value of the land. I xercised my own judgment more than anything else; of course I considered the valuer's evidence, and had it before me at the time I was inspecting the land.

7750. I presume you thought it possible that their valuations would be influenced by the parties for whom they appeared in court?—There could be scarcely a doubt about it.

7751. I gather from your evidence that when you have given a percentage on the outlay on the tenants' improvements, you believe that that completely absorbs any increased benefit that might result from those improvements to the farm?—I invariably allowed such a percentage as I thought fully covered the improvement.

7752. You have told us that in your opinion the rents fixed in the early years of the Land Commission are somewhat higher than they would be if fixed at the present moment?—I think rents fixed within the first three or four years after 1881; owing to the fall in prices since, and increased cost of production by labour, where labour is employed on the farms, would be lower now, assuming that they were fixed on the basis of prices at the time. I may also mention that I think the Assistant Commissioners, or Sub-Commissioners, between 1881 and 1884 or 1885, were not furnished with maps of the farms from the Land Commission, that is my recollection of it;

Mr. *Macartney*—continued.

parties lodging appeals, were bound to lodge maps in the general valuation office, with the farms marked on; but as well as I recollect (I may be wrong, but I think I am not) the Sub-Commissioners then had not maps furnished them; maps did not become general until 1888.

7753. Would that have any material effect upon the valuation?—I think it would be very difficult to value a farm, particularly where the soil is variable, without having a map; I could not do it I know. One part of a farm may be worth four times as much per acre as the other, and unless I had a map so as to mark the value of each field on the map, and afterwards calculate the area and the price, I could not do it; I think it is very material that there should be maps. On small holdings, of course, it would not be so important, nor on holdings where the soil was almost similar all over; but holdings such as these are very few, of any extent.

7754. I do not want to take up time by going into questions of prices, I will put to you this question: Would it not be a fair representation of what has occurred since 1881 to (we will say) this year, to say that there has been considerable fluctuations up and down, with the exception of wheat; I mean to say both as regards stock (certainly as regards stock) and with regard to produce generally in Ireland?—Yes, there have been considerable fluctuations.

7755. Stocks of all sorts have been both high and low?—Yes; and prices for produce have varied in the same way. Butter has kept more uniform in price than any other produce I have noted, as I have looked into the market prices from time to time.

7756. And with the exception of wheat, should you be inclined to say there has been any continuous downward tendency in the prices of farm produce in Ireland?—Yes; there has been, and in wheat very much.

7757. With the exception of wheat; we know that there has been in wheat?—Oats and barley have also fallen in price, and mutton has fallen considerably, and beef.

7758. I am not talking of stock, or of beef or mutton, I am talking simply of the result of tillage; you would not describe wheat as forming an important element, would you, in Irish farming?—Not in Ireland.

7759. What wheat is grown is probably grown for consumption?—It is little grown, and it is grown for consumption; but principally, I think, for thatch on the small farms, where the houses are thatched; the straw is better than any other straw for thatching purposes.

7760. An extremely valuable product, or not "an extremely," but a valuable product, which has not been affected by any fall in the prices of grain?—I do not think the price of straw has been affected; I have not noted the price of straw so very much.

7761. You have not given any very close attention to the upward or downward tendencies?—Oh, yes; I have constantly kept them in mind; looking at the newspaper reports of the markets, and so on, from time to time.

Mr. *Macartney*—continued.

7762. Would you depend very closely upon the newspaper reports of the markets; the top prices, for instance?—Generally, as regards cattle.

7763. The fairs?—The prices for beef and mutton rule almost the price for store stock below. As regards produce, oats and barley are the principal grain products, and they have come down a good deal in the last six years.

7764. There are tables which we can examine afterwards as to that; but I suggest to you that in competing markets in Ireland (at all events in my part of the country) it is a very common thing in order to benefit the market, and to benefit the people of the town, to put an artificial price on?—I have never met with a case of the sort.

7765. Now you have to take as one of your elements in the consideration of fixing rents between 1881, 1882, and 1883, the cost of labour, and you said that wages had gone up very considerably since; do you mean to say that the wages since 1887 and up to 1894 are considerably higher than they were from 1881 to 1887?—Repeat the question again as regards the years, please.

7766. You have not given exactly any years, but you said that the cost of labour, the wages, had gone up very considerably since?—Gone up very considerably in some places, and gone up everywhere that I have had to do with all over Ireland.

7767. Do you mean to say that between 1887 and 1894 wages have increased as compared with the period between 1881 and 1887?—I find they get higher almost annually; I think they have gone up.

7768. Do you do any tillage on your farm?—No, except a very small amount.

7769. Did you in 1881, 1882, and 1883?—No, I did no tillage on my farm for over 20 years scarcely.

7770. So from your own personal experience you have no record?—No, but I inquire.

7771. I want to know what is your own personal experience?—I have no personal experience.

7772. I do not want to press you; I do not know whether you are aware that there has been an inquiry into the condition of the agricultural labourer in Ireland under the Royal Commission on Labour?—I am not.

7773. This is Mr. W. P. O'Brien's Report upon the "Selected districts in counties Carlow, Cork, Clare, Kerry, Kildare, Kilkenny, King's, Limerick, Queen's, Tipperary, Waterford, Wexford, and Wicklow," which are a very fair sample of Ireland?—Yes, particularly of the part of Ireland I have had to do with.

7774. Now what I want to know is this: Does your observation upon what you call the continuous increase in wages apply all the year round or only to the period of harvest?—All the year round; it is greater, of course, during harvest time.

7775. The question of the cost of labour would apply only to a proportion of the Irish tenant farmers?—True.

7776. The smaller proportion?—Yes; it would

Mr. *Macartney*—continued.

would not apply where the farmers work the farms.

7777. You know generally that it would be so?—Yes, I daresay it would be; it depends on the district.

7778. I am just going to read to you three short paragraphs which deal with this question here, and I will ask generally whether you agree with those or not. "As regards the sufficiency or otherwise of the supply of labour for present requirements, it has been seen, from the several reports already submitted by me, that there is almost everywhere a striking concurrence of testimony as to the fact that during the hurried seasons, spring, haytime, and harvest, but especially during the harvest period, when time is the paramount consideration, a more or less serious dearth of labour is now nearly universally experienced, and complained of by the farmers"; would that be correct?—Yes; I agree with that.

7779. "At such times there can be no doubt that in recent years the most injurious consequences would have been in numerous instances, and in many districts, entailed by this were it not for the mechanical aids now supplied by the use of agricultural machinery, to which resort is at the present time almost everywhere commonly had by most farmers of at all a large class." Would that correspond with your experience?—Yes, it would. But for the machinery in many cases the harvest could scarcely be got together in many parts of Ireland.

7780. The machinery has not only replaced the scarcity of labourers, but it enables the large farmer to get in his harvest much quicker, does it not?—Yes, it has supplied the want of labour on large tillage farms.

7781. And more economically?—Certainly more economically.

7782. Now this is the third paragraph: "In the case of the smaller farmers, to whom this resource is not open, the difficulty is generally met by the practice which now obtains amongst them of at such periods mutually assisting each other; a practice, it may be observed, which is much facilitated in some districts by the fact that in different kinds of land the necessary work can be done at varying dates, between the middle of June and the middle of September in each year." Would your experience agree generally with that?—I can hardly say that I know of any cases that would fall within that view.

7783. In the districts with which you are acquainted in Ireland, you are not inclined to concur with the statement that the smaller farmers assist each other?—Oh, they assist each other.

7784. I want to ask you just this last question upon it, then I will not pursue the subject any more. In this Report Mr. O'Brien states, speaking of the whole of this district generally: "The usual rates, where diet is not supplied by the employers, may be said, speaking generally, to range from 8*s.* to 12*s.* a week; but 9*s.* and 10*s.* constitute by far the most common scale observed in the case of the ordinary rural labourers?"—That is my experience.

Mr. *Macartney*—continued.

7785. This is the 1893 Report. I want to ask this further question: Do you say that the ordinary rural labourer, in a district where there was any necessity for tillage, did not get, between 1881 and 1887, from 8*s.* to 12*s.* a week, or from 9*s.* to 10*s.*, as is put here?—Yes; I think he did get that during that period.

7786. From 1881 to 1887?—Yes, I think so on the average; it was very difficult to come closely to the matter; in Fermanagh particularly I found wages very high.

7787. There are districts where they are high, but I am talking of absolutely rural districts; I am not taking the vicinity of Belfast or of any of the large towns?—I know very little of the north.

7788. I just want to ask you a question or two about sub-letting. You have told us that the sub-tenant can get his rent fixed as against the tenant?—Yes.

7789. And you have fixed it, I suppose, yourself on your experience?—I think not; I was only a short time acting as an Assistant-Commissioner.

7790. In fixing the rent of a farm, have you ever made any order with regard to the accommodation for the labourer under the Act?—I think not.

7791. Then I will not ask you any questions about that. Are you satisfied with the powers given you now by the Act with regard to the sufficiency or not of the accommodation for labourers employed on the farm?—Under the Labourers' Act there is sufficient accommodation.

7792. I am dealing now with the sub-letting question; the Act of 1887 places it entirely in your discretion; do you think that is satisfactory?—I think it is.

7793. Would you be inclined to throw open sub-letting; I mean, to allow sub-tenants who are not connected with the farm to obtain a position on the farm, and at the same time to allow the tenant to go into court?—I am not sure that I understand your question rightly.

7794. I will just put it in this way: at the present time certain holdings are liable to exclusion from the benefits of the Act on account of sub-letting?—Yes.

7795. This sub-letting of course must be to persons who are not connected with the agricultural necessities of the holding?—Yes.

7796. Would you be inclined to do away with that restriction on a tenant coming into court; would you throw open the whole question of sub-letting and abolish the restriction?—If the sub-letting occurred before the passing of the Act of 1881, I would think it not reasonable for the landlord or the agent, being aware of it, now to come into court to raise an objection against the tenant getting the rent fixed in consequence of that. If the sub-letting took place since 1881, since the Act came into operation, I think the assent of the landlord or of the agent should have been obtained.

7797. Then with regard to these sub-lettings which existed before 1881, of whatever character they have been or for whatever purpose, do you think that the Sub-Commissioner should have

Mr. *Macartney*—continued.

jurisdiction to fix the rent as between sub-tenants and the tenant?—I think so.

7798. Then on this question I understand that, subject to these two limitations, you think the whole of the restrictions on sub-letting ought to be swept away?—With the exceptions that have been mentioned.

7799. Do you believe that there occur cases of hardship to tenants coming into court in establishing their improvements outside Ulster by reason of the fact that the presumption is not similar outside Ulster to what it is in Ulster?—Not from my experience.

Mr. *Sexton.*

7800. You have been asked whether the provision in regard to sub-letting in the Act of 1887 is sufficient. The Act of 1887 authorises sub-letting for labourers employed on the holding, or trivial sub-letting, but I call your attention to the fact that if any such sub-letting has taken place since the Act of 1887 was passed the tenant is shut out of court; do you consider that satisfactory?—I do not for labourers required on the farm.

7801. Or trivial sub-letting?—Or trivial sub-letting.

7802. Now generally, upon the question of sub-letting, whatever may be the rights of the landlord in regard to sub-letting as a breach of a statutory condition, do you think parts of Ireland, where the tenant holds the main bulk of the holding, where the security for the rent is not diminished but increased, that the tenant by reason of that fact should be altogether shut out from the security of tenure?—I think it is hard that the tenant should be shut out when the sub-tenant gets a rent fixed against him.

7803. Or in any case, if the landlord's interest does not suffer. Is not the interest of the landlord now (looking at it practically) the right to receive the fair rent; if that interest is not damaged why should the tenant be barred from having a fair rent, and still more from having security, which is more important than having a fair rent fixed?—If not prejudicial to the landlord's interest I think it ought not to be a bar.

7804. You have been asked about machinery. The agricultural holdings of Ireland, as a rule, are small, are they not?—Yes.

7805. A great agricultural holding such as you know in England is an exception in Ireland, is it not?—Quite an exception.

7806. Would there be more than a minute fraction of the agricultural farmers in Ireland able to use labour-saving machinery to any great extent; must they not in the main resort to labour?—The bulk of them require manual labour, and the farms are not suitable for machinery.

7807. You have given very emphatic and clear evidence, both as to the general fall of prices since the early years of the Land Act, and also as to the rise in the cost of labour; is your opinion as to the rise in the cost of labour affected by what has been read from the Report of Mr. O'Brien, or do you stand by your personal

Mr. *Sexton*—continued.

experience?—By my personal experience and from information I have gathered from place to place.

7808. Labour has risen in cost since the early years of the Land Act?—Labour has risen.

7809. And prices have fallen?—And prices have fallen.

7810. The rents fixed in those early years are excessive rents now?—I beg your pardon; the price for butter has not fallen in the same ratio, or scarcely at all, taking the average prices of the last six years as published by the Land Commission, and the average prices for butter for the six years, commencing in 1882: they are nearly equal. In other products the prices have fallen; that is, comparing the averages of the last six years, ending 1893, with the previous six years, commencing from the time the Land Act came into operation. The greatest fall that has occurred has been in mutton; the next in beef; then in pork; and then the next in corn.

7811. Mutton, beef, pork, and corn give the bulk of the produce in Ireland, do they not?—But the greatest fall is not over 20 per cent., except in cattle; I must make that exception.

7812. In the bulk of the produce of an Irish farm there has been an all-round fall?—Yes, save butter, comparing the last six years with the previous six years.

7813. How does the butter stand?—There has been a slight fall, a mere decimal proportion. I can give it you if you wish.

7814. A slight fall in butter, but a heavy one in most other things?—A slight fall in butter; the last three years the price of butter has been very good.

7815. Looking to the fact that rent is a fraction of the produce (let us say a fourth or a fifth), what happens to the tenant whose rent was fixed in the early years of the Land Act, who has since suffered a material all-round fall in prices? Where is the rent? Is the rent swept away?—Not "swept away."

7816. That part of his produce is gone, is it not?—Yes; but then the small tenant consumes a large proportion of the produce which would not be affected.

7817. So far as he sells the produce, what would happen?—So far as he sells the produce it would be affected, but I would not say swept away. I believe rents fixed between 1881 and 1885 were fixed on a higher basis than the rents that have been fixed since.

7818. And I suppose it is not too much to suggest that those who had their agreements made out of court and who received smaller reductions than those who came in are probably worse off than those whose rents were fixed in court?—I have no experience of that, and cannot say.

7819. If the man who got the smaller reduction in those years then comes in court, the presumption is that he is rather worse off, is it not?—The presumption would be that he is.

7820. Are not these people suffering great hardship now; and what do you say to the proposal that they shall be compelled to wait until the

Mr. *Sexton*—continued.

the year 1900, say, before getting a revision?—I think it would be more reasonable in the case of rents fixed in the years I have mentioned to allow tenants to come into court before the expiration of 15 years than otherwise.

7821. Say at the end of seven?—I think seven is a short period; I would be rather disposed for about 10 years. Seven is a short period for the revision of rents, or for rents to continue.

7822. It has been suggested that the tenants would wilfully deteriorate their farms if you allowed them to come in; what do you say as to that?—I do not think they would. There may be a few of the tenants who would do it, but it would be quite an exception, and it would be a very mistaken policy on the part of the tenant.

7823. Especially warned, as they are by your evidence now, that you would value the farm in the ordinary condition in which it ought to be?—I have met with many farms no doubt deteriorated, but I think it was from a want of capital, or want of industry on the part of the tenant, perhaps both; principally over-cropping, over-meadowing, growing three crops of corn in succession where only one should have been grown.

7824. It was not wilful deterioration?—I think it would be quite an exception for men to deteriorate their lands with a view to getting a reduced rent fixed upon them.

7825. Where an exceptional tenant wilfully deteriorated his farm you would be very willing to counteract him in the valuation you made?—Decidedly I would.

7826. There is not a shred of reason in that for delaying the shortening of the statutory term?—Certainly not.

7827. We have been told, however, that it would upset the country. In your opinion, would not it upset the country far more for men to go on for years paying unfair rents?—I do not know; but I think the country would not be upset under any circumstances; I do not think it would.

7828. Do not you think that the continuance of the injustice of paying unfair rents tends to upset the country, and that the removal of the injustice rather tends to the tranquility of the country?—I would give them the opportunity of coming in and getting fair rents fixed if they wished to do so.

7829. Have you been concerned in fixing specified value?—Only in one case that I remember. My colleague and I were asked in two cases, in the county of Louth, I think, to fix specified values, but we had no evidence before us of how the interests in the farms sold, or what the specified value would probably be, and we declined consequently to go into the question.

7830. I gather from the evidence we heard here the other day that the fixing of this specified value is a duty that you and your colleagues dislike most?—Yes; it is one we do not like to undertake.

7831. You have no material to go upon?—We have no material to go upon.

7832. In Ulster every custom tenant sells his tenancy in the land when he pleases, under the Act of 1881, for the best price that can be got

Mr. *Sexton*—continued.

for the same; does that injure anybody?—I am disposed not to put on the specified value, providing that it will not prevent the landlord, in the event of a sale subsequently, asking to have the true value fixed; but I think the landlord should have an opportunity to repossess the holding, if he thought proper to do so. When he comes to deal with the true value question, he is bound to take it; but in the case of having the specified value fixed, he may or may not accept the right of pre-emption subsequently. If the value of land falls in the meanwhile, between the time that the specified value is fixed and the time the tenant might wish to sell, very naturally the landlord would not take advantage of it; if it went up in the market, the probability is that he would. I think it would involve a good deal of litigation where the tenant would have a right to be allowed for any improvements made after that specified value was fixed. Where, on the other hand, the landlord could claim for any deterioration that took place in the meanwhile, I think it would be attended with a good deal of litigation and delay to the tenant at a time probably when his object in selling is to emigrate or get out of the country; but I would be in favour of giving the landlord the opportunity of reinstating himself in the farm if he thought proper to do so.

7833. At a lower price than any other person would pay for the farm?—It was evidently the intention of the Legislature that the party who fixed the rent should fix the price.

7834. Yes; and they said that the man might sell his tenancy for the best price that could be got. Do you understand that the true value is to be a lower value than anybody else would give, or do you understand it to mean that whilst the landlord is not to be put to the ordeal of competition, at the same time the Commission should estimate what would be the real price the tenant would be likely to get for the holding?—I have had no opportunity of fixing the value, but I understand, as I say, that the intention of the Legislature was that it should be at a lower price than the full market value.

7835. In Ulster, where the Ulster tenant sells at the highest price he can get, agricultural rents are just as high as elsewhere, and the judicial reductions are not greater than elsewhere; it appears, therefore, does it not, that the interest of the landlord in Ulster as a receiver of rent does not suffer by the fact that the tenant can sell the tenancy at the best price that can be got?—It would appear so; but there the landlord is deprived of the opportunity of reinstating himself in the farm or resuming possession if he thought proper. I am aware of that from what I have heard, and also from what I know, that is the custom.

7836. Of course the intention of the Legislature is that farms should be tenanted?—Of course; I should think so. The intention was to protect the tenant in the farm, by having fair rents fixed for them.

7837. If you allow the landlord to buy the tenancy at a less price than another man would give for it, what is to prevent him the next day from taking in a new tenant, and taking from

Mr. *Sexton*—continued.

that tenant, by way of fine, as much as a tenant would have given for the farm in the open market, that is, putting into his own pocket the difference between true value and the value as ascertained in the market?—I do not know that there is anything to prevent him.

7838. Does not that look like a transfer to him of the legal property vested in the tenant by the Act of 1881?—No.

7839. The Act of 1881 says that the tenant shall sell the farm for the best price; that is the general principle?—If so, then why have a "true" rent fixed. What is the object of the true rent. It is to be the arbitration rent as I understand it, fixed by the party who fixed the fair rent.

7840. We are on value now, not on rent?—I know you are on value. I regard it as fixed by arbitration.

7841. You have told us that the rent is not affected by the price the tenant could give or get; the rent is not affected at all by the price?—No, certainly not.

7842. Therefore the interest of the landlord is not affected?—Certainly not.

7843. Why should the landlord be allowed to-day to buy the tenancy in a farm for a sum materially lower than any other man would be willing to give for it, and then to-morrow to sell it to another man at the full price which the outgoing tenant might have received if he had been allowed?—I believe it was the intention of the Legislature that the man in occupation, or those who come after him, should have the land at a fair rent, one that he could live by, but that if he thought proper to part with it, the landlord would have the right of resumption on certain conditions, namely, the fixing of the value of the interest in the farm by the Land Commission.

7844. The Legislature has never said, so far as I can discover, that the true value is anything else than your estimate of what the tenant should get if he sold in the market?—What was the object in interfering then?

7845. To save the landlord from competition against himself if he appeared as a bidder, which might run the price higher than it would otherwise be?—I think it was a wise provision for the Legislature to have put in, that there should be either a true value or a specified value fixed.

7846. Although the effect of it is that a part of the money which the tenant might receive, as under the Ulster custom, in selling his farm may be transferred to the pocket of the landlord by a sale by the landlord immediately after he acquires the tenancy?—That might occur.

7847. You were a very short time on the Bench?—From January to the following March twelve months.

7848. And I think you have very slight experience of the questions that arise on the hearing of a case?—I had a good many.

7849. You have had no great experience of this question, as to whether a tenant has a right to have a rent fixed or whether the holding is one to which the Act applies?—No; I cannot call to mind anything on that subject.

7850. Then I shall not trouble you on that.

Mr. *Sexton*—continued.

You have just been asked whether the legal Sub-Commissioner left you unfettered in dealing with improvements?—Certainly.

7851. And when you went back to the court after the inspection of the holding, if you and your colleague differed on any question as to the value of the improvements, of course the vote of the legal Sub-Commissioner came in and decided the question?—We have differed, and the legal Sub-Commissioner interfered, and brought us together in most cases by splitting the difference, or, on talking over the matter, I might see that I was in error, and that my colleague was right, or he might take a similar view the other way. It did not always follow that we were divided. In one or two cases the legal Sub-Commissioner had to decide with one of us.

7852. His vote therefore determined the question?—No, not always, as I have just mentioned.

7853. Whenever he chose to exert it, when you differed, he had the power to say absolutely what it should be where you did not agree to melt your difference?—Yes, when we did not agree we talked over the matter and went into the details of our valuation to try whether either of us might have been wrong (we are not infallible), and on reconsidering the matter over either of us might be influenced to increase or decrease any particular part of the valuation of the farm. The splitting of the difference seldom occurred, but it has occurred.

7854. Your court, or the Land Commission sub-courts, I think, are the only courts that I know of in which, in the interests of the parties, the court conceals all the grounds and elements of the judgment, and only states the bare result, the fair rent. Do you see any reason why the parties should not be told what those grounds and elements are?—I see no reason; I think they ought to be told. I think every detail, the improvements and everything in that way, the parties ought to be informed of.

7855. And where a Sub-Commissioner dissents conscientiously, and maintains his dissent, and the rent is carried by the votes of the other two, do not you think the practice ought to authorise him to state his dissent and the grounds of it?—Certainly.

Mr. *Macartney.*

7856. Do you mean in court?—Yes; everything should be made clear to the parties interested.

Mr. *Sexton.*

7857. That is a very satisfactory answer; you think the elements of your decision should be communicated?—I see no object in concealing them.

7858. I notice the appeals are about one-fourth of the number of cases heard. Out of the whole number were about 45,000 appeals?—I do not know the number.

7859. There appears to have been an increase of about 1,000*l.* a year, according to the figures I have before me, a minute result to be brought about by such an enormous machinery?—Is that calculation based on the rents that were increased

or

Mr. *Sexton*—continued.

or reduced on appeal, or is it calculated on the basis of all the appeals brought into court.

7860. It is the net result of all?—Is that a fair principle to ascertain the average.

7861. Of course, the increase and diminutions have been in some cases considerable?—In striking an average these should be taken alone; you ought not to include cases where the rents are confirmed, because, say, out of the six appeals five are confirmed, and the other one may be either raised or reduced 25 per cent.; if you divide that 25 per cent. between the six, I think it would be a very unfair average to put forward.

7862. The Chairman has been so good as to ask for a return which will enable us to distinguish between the cases of rents confirmed on the one hand or reduced upon the other; meanwhile we are thrown upon the average of the whole?—If you are to be able to arrive at the average increase or decrease it should be on those that were actually altered; to include the others would be a mistaken way, in my opinion, of ascertaining what the rise or fall under appeals was.

7863. May I say, generally, that the great body of appeals have had their rents confirmed?—The great bulk of them.

7864. The great bulk of them have had the rents simply confirmed?—Yes.

7865. And I should think in the great majority of the remainder there was either a slight reduction or a slight increase, not very material?—In some cases material, in the majority of cases slight. I, as a court valuer, if I came near to the rents fixed by the Assistant-Commissioners, say within 5 per cent. on small holdings, would be very slow to alter them; under any circumstances I would be slow to alter (having given the matter very full consideration) where my opinion differed as a court valuer valuing after two Assistant-Commissioners.

7866. Unless you found the difference material, in your judgment you would be apt to confirm theirs?—Up to 5 per cent.; if it were more I would put my valuation forward. Some valuers are in the habit of altering a valuation if they only differ 5*s.* in 50*l.* I think it would stop litigation, when you come within, say, 5 per cent. of the rent fixed by the Assistant-Commissioners, to adopt their view of it.

7867. There are some Commissioners whose disposition it is to dissent, and others whose disposition it is to confirm?—I do not know about the dispositions, I cannot tell what their dispositions may be; I know what I try to do myself.

7868. I understand that although the Land Commission re-hear cases and may hear new evidence and come to new views upon all the evidence, so far as you are concerned there is no new consideration of the question of the right to improvements; you take the improvements as they were settled below?—Not at all.

7869. I mean as to which belong to the landlord and which belong to the tenant?—Yes; but I must use my own judgment as to the value.

7870. As to the value?—Yes.

Mr. *Sexton*—continued.

7871. But in regard to the question of which improvements are the landlord's and which are the tenant's, and all the important questions which bear upon that point, there is no new consideration of the question by you?—As regards the improvements by a landlord, it is only in the case of buildings that they come into consideration; if he made improvement in the land he would have the advantage of it in the valuation.

7872. Who would?—The landlord.

7873. Certainly; but I mean questions may arise in the court below as to whether an improvement other than a building or reclamation was made before or after 1870, or whether the tenant held under a lease and so forth; many legal questions upon which the determination of the question might hang; you would take the decision of the court below as binding you?—As to the classification of the tenants' improvements, I must.

7874. The appeal, therefore, so far as a valuer at any rate is concerned, does not apply any fresh judgment to the question of the legal division of improvements between the landlord and tenant?—No.

7875. Do you consider improvements very important in Ireland?—Decidedly.

7876. Whatever may be the opinion as to the value of existing improvements, do you say that the soil of Ireland is susceptible of great improvement?—Decidedly, that is a great part of it; I do not say the whole of it; you ask me as to "the soil of Ireland"; I say a great part of it is susceptible of improvement.

7877. The future of the country will depend in a great measure on the extent to which improvements are carried out?—I cannot say that.

7878. Might I say that in agricultural competition with other countries the future of Ireland will depend greatly upon the efficiency of the cultivation of the soil, which includes improvement?—It will very much depend upon the cultivation and management of the soil generally.

7879. Including improvements?—Including improvements.

7880. Who is going to make these improvements that are required?—I cannot say; the tenants in the past have made the improvements generally in Ireland.

7881. And the interest of the landlord in the land being now diminished by the Act of 1870 and that of 1881 to that of a rent-charger, of course it is less likely than before that he will make any improvement?—I think so.

7882. Would you treat it as a matter of vital importance that the tenant should be encouraged by the law to make the improvements?—They should be protected in their improvements.

7883. And by "protection" encouraged?—Of course protection would encourage them; if they feel that they will have the advantage of their improvements, they will be encouraged to make more.

7884. Does it encourage you to lay down a definition of an improvement, under which, if the tenant puts in a holding a house which is held to be

Mr. *Sexton*—continued.

be too good for the holding, and therefore unsuitable to the holding, he is liable to pay rent on the house as well as on the holding?—If the tenant built the house, he is not to rent it.

7885. Who is not?—The tenant.

7886. If the house, being too good for the holding, is judged to be unsuitable for the holding, is it not the law that the tenant must pay full rent on the house?—If he built the house, or his predecessor, certainly not.

7887. You have never heard of the case of John Robb, have you?—We allow the landlord rent when he erects the buildings.

7888. The tenant runs risks, does he not, in laying out capital on improvements?—Yes; he must run some risk. Anyone laying out money on improvements must run some risk.

7889. In some cases there is no improved letting value, is there, arising from the money spent?—I have met with many cases in which there is no improvement in the letting value.

7890. He has lost whatever he did there as far as his rent is concerned?—Yes.

7891. I assume he did some work?—Yes; assuming he did, it is just possible he may not have effected any improvement; I have met with cases where land was reclaimed, and when I came to deal with it as reclamation I have found that it had fallen again into its former state, and that it is not worth 2*s.* an acre.

7892. Although there is an improvement in letting value, in many cases it is not equal to the cost. Reclamation of very poor land, as in the West of Ireland, is very often not worth much. A tenant spends 20*l.* (we will say) in labour on an acre, and the acre is worth 10*s.*?—I have not met with any cases of that sort, of 20*l.* spent on an acre.

7893. I know fields in the West of Ireland that were rock, really, and mountain-side, where there was hardly any soil, and where reclamation cost more than 20*l.* an acre for labour?—I daresay the raising of the rock and subsoil would cost a large sum.

7894. Where the value of the improvement is less than the cost, you allow whatever improvement there is to the tenant?—I do not quite follow that.

7895. Where the increased letting value resulting from an improvement is less than the allowance that should pay the cost, you allow him whatever there is?—Decidedly.

7896. But now, in the case where there is an increase of letting value greater than the cost of the improvement, what do you do?—In every case that I come to deal with I allow the tenant the full value of the improvement with the best light and the best judgment I have, whether that would be 4 or 5 per cent., or whatever percentage it may be.

7897. You first estimate what it would cost, say 100*l.*?—I estimate what it cost.

7898. Say that it cost the tenant 100*l*, or rather that it would have cost the landlord that if he had done it?—No matter what it cost, I would give the tenant the benefit of his improvements.

Mr. *Sexton*—continued.

7899. You find that the man has spent 100*l.*; you then make an annual allowance, sufficient, in a certain number of years, to repay the cost?—I estimate how much the farm is improved by reason of the improvements.

7900. You have gone back to that again; you find the capital value of the improvement?—Yes.

7901. Having got the value of the improvement, you make an annual allowance which in some number of years will repay the cost?—I do not take it in that way.

7902. How do you take it?—I estimate how much the farm is improved by the tenant's expenditure for drainage, fencing, or reclamation.

7903. The improvement in annual value?—Yes, in annual value.

7904. Then what do you do?—I deduct from the present value interest on the cost of that improvement.

7905. The cost is the capital sum?—Yes.

7906. You must make an annual deduction?—Yes.

7907. What is the annual deduction?—It is generally equivalent to 5 per cent. on the expenditure.

7908. What is the object of this 5 per cent.; is it to repay the cost in 20 years; is it your purpose to pay him back what he expended?—It is not.

7909. What is your purpose?—My instructions are not to charge the tenant a rent upon his improvements; I find improvements effected, and I deduct the value of those improvements. Say they have improved a certain area of land 10*s.* an acre, and that the land is worth 13*s.* or 14*s.* in its present state, I deduct the 10*s.* from the 13*s.* or 14*s.*, and then I put the difference to the landlord. I would make no estimate of whether the tenant would be recouped within 20 years or not.

7910. How do you divide the improved letting value between the tenant and the landlord; a part goes to the tenant and a part to the landlord; upon what principle do you divide it?—The improvement in the land? I will put the case to you in figures as best I can; say the land in its present state is worth 10*s.* an acre, I estimate what it has cost the tenant to bring it into that state, allowing him full liberal wages for it, and deduct interest on that from the gross value; the difference, if it exceeded what would have been a fair price to put upon the land originally, I would divide the difference, which is usually called "the unearned increment," between them.

7911. Let us see: suppose he spent a 100*l.*, and that the result was an increase of 10*l.* a-year in letting value, how would you distribute that 10*l.* a-year, which was the result of that expenditure?—I would satisfy myself of the value of the improvement, as I have stated.

7912. I said "10*l.* a-year"; he spent 100*l.*, which resulted in improving the land 10*l.* a-year; how would you distribute the 10*l.*; that is a simple case?—I would allow him 5 per cent. of the estimated cost and half the unearned increment; that

Mr. *Sexton*—continued.

that is, the difference between what the land is worth, less the 5 per cent., and what I believe it was worth in its previous condition before the improvements had taken place. I should divide the difference between them in addition to the 5 per cent.

7913. You would just give him 5 per cent. on his expenditure, and then divide the remainder between the landlord and him equally?—Not the "remainder." The land was of some value before anything was done to it; say, 1*s.* or 2*s.* an acre. The bulk of reclamations I have had to deal with have been made by small tenants on their farms where bog was attached, either as an appurtenance or included in the ambit of the farm; and as the peat or turf was cut away or removed, what was left was reclaimed by the tenant. That is not of much value; in some cases it is of little or none.

7914. You need not go into detail; what I want to know is the main principle. You say you would give 5 per cent., and divide the difference between the tenant and landlord?—Not the whole, I beg your pardon; the land is worth something before the improvement is commenced. I would divide the difference between that and the 5 per cent.

7915. Suppose there was a pound, and you were to remit that to the original value, you would then divide the remaining 4*l.* The figure I gave you was 10*l.* annual value?—Yes, I admit all that, at the rate of 10*l.*

7916. Now kindly leave out of view the original value and deal with the improved annual value, 100*l.* spent, 10*l.* improved annual value, 5*l.* of that to the tenant, the remainder halved between the landlord and tenant; is that your practice; observe we are dealing with improved annual value?—Yes, as already stated.

7917. Improvement in annual value?—Yes.

7918. Well, is that your practice?—No; I would be more liberal towards the tenant. I should give the tenant the full benefit of his improvements, no matter what he made the land worth. I would say, "This is over and above a fair price to put on the raw material." I have endeavoured to do that and shall try to do that still.

Colonel *Waring.*

7919. Have you ever had to deal with such a case as that?—I do not think I have had to deal with the "100*l.*" case.

Mr. *Sexton.*

7920. May I repeat your answer and ask you to see whether this is correct. A tenant spends 100*l.*; by the spending of that he improves the annual value of the farm by 10*l.* a year (you observe you need not revert back to the value before that); out of that you allow 5*l.* a year to the tenant; what do you do with the other?—I would allow him the whole 10*l.*

7921. You would?—Yes, that is my invariable practice; wherever the tenant has made an improvement I try to give it him, and shall continue that course.

7922. Are you aware that other Commissioners here have given different evidence?—I am not aware of what others did.

Mr. *Sexton*—continued.

7923. I am much obliged; I think you are giving your evidence very fairly; I have no fault to find with you. If it were known that the law, as interpreted, does not authorise that course, are you of opinion that the law ought to be amended?—I follow "equity" more than "law" in all these matters when I come to deal with the farms.

7924. And do you think that the "law," in order to satisfy "equity," should authorise the practice you describe?—I think so.

7925. Just a question or two about fair rent; you fix the rent of a holding at a figure which you think that a reasonable person, a solvent person, intending to pay the rent for 15 years, would be willing to give?—Yes, a tenant with sufficient capital to manage the farm, and with reasonable normal management.

7926. In fact, I should say that a Sub-Commissioner, being himself a reasonable man, ought to fix the rent, under your practice, at what he would think fair to give himself, if he wanted the farm?—Well, I can scarcely put myself in the position of a small tenant holding 10 or 15 acres of land; but my endeavour has been to put on a reasonable and fair rent such as a solvent tenant with usual industry could afford to pay.

7927. What, then, did you mean by saying that a competition rent is 25 per cent. over a fair rent?—Decidedly, I believe if the land was put in the market it would bring 25 per cent. more than the rent I put on.

7928. That is to say, that people not solvent, nor intending, perhaps, to go on paying the rent, would offer 25 per cent. more?—I think they would offer more. It is difficult to estimate, for this reason: very few farms are now let direct upon which I could form any opinion as to what the land would probably fetch; but I would estimate it on the prices that would be paid for the tenant's interest.

7929. Do you allow the price that might be paid for the tenant's interest to enter into your consideration?—Decidedly; how else could I gauge that the lands are worth 25 per cent. less than they would fetch in the market on competition rents? It is only in that way I can estimate it.

7930. The evidence before us is that you value the holding at what a solvent person outside the holding would be willing to give from year to year; that is, not the "sitting" tenant, but any other person?—I do not.

7931. You do not?—No, I put it below that; that would be a competition rent to a solvent tenant.

7932. So I thought; the drift of the evidence hitherto before us has been that while a tenant is protected against the competition of the insolvent, who might offer more than they might be able to pay, you fix the rent at what a solvent bidder outside would be willing to give; is that your evidence?—No; I put it at a rent below what the solvent bidder outside would give.

7933. Do you then, in fixing a fair rent for the "sitting" tenant, an occupying tenant (the sitting tenant as they call him), deduct from the rent that you think a solvent person coming in

Mr. *Sexton*—continued.

from the outside would pay? Do you deduct the annual sum in consideration of the interest of the occupying tenant?—Not in figures; but I put on a lower rent. I put on a lower rent than if it were offered by competition, and no tenant accepted but a solvent man. I put on a lower rent than that.

7934. I think your answer is a very good and very honest one, but I am puzzled very much; you are a court valuer?—Yes; I am a valuer for the Court of Appeal.

7935. Other Sub-Commissioners, from whom appeals come up to you, have told us that they fix the rent at what a solvent stranger would give for the farm, and then you say that you fix the rent at what such a person would give, making a deduction for the interest of the tenant; yet the rents that have come up from them to you have been increased?—The rents, I believe, would be exceeded in the market by a solvent tenant considerably.

Chairman.

7936. A solvent stranger?—From a stranger if it were in the market now.

Mr. *Sexton.*

7937. I asked, did not you think it fair to fix a fair rent at what any solvent stranger may give?—I make it below that to the tenant in occupation.

7938. And I understand that in doing that you consider you are carrying out the direction of the statute; that in fixing the fair rent you are to have regard to the interest of the tenant, in fixing the rent to be paid by such tenant to the landlord?—Yes.

7939. Whatever may be the view of the other Commissioners and their conduct, that would be your practice?—That is according to the light which I have and on which I act.

Mr. *Hayes Fisher.*

7940. Is it not the fact that the great bulk of the land in Ireland is cultivated by the tenant and his family?—Numerically the bulk.

7941. There is no wage paid for labour, is there?—No.

7942. Therefore the question of the price of labour would not affect at all the question of the cost of produce?—Where the tenant and his family work the farm the increased wages would not affect it so far as the working of that farm went.

7943. Then on the other holdings where labour is required, of course labour-saving appliances have to a large extent been used?—Yes, they have; but these large farms where they are used are very few and far between; they are in Carlow, and some other counties.

7944. Speaking generally, would it not be fair to say that the slight increase in the cost of labour has not seriously affected the cost of producing the crops?—Not to the small tenant.

7945. On the question of improvements you stated in answer to Mr. Sexton that it is very

Mr. *Hayes Fisher*—continued.

necessary that great improvements, considerable improvements, should be made in cultivating the land in Ireland, and you consider that in the present state of the law the landlords are not likely to make those improvements?—I think so.

7946. Do you think (speaking generally again) that the tenants are seriously hindered from making those improvements by any want of security for obtaining the full value for them?—I do not think they are.

7947. You do not think they are?—No.

7948. I believe you have stated that you were an Inspector under the Purchase Acts up to 1888?—Yes.

7949. Do you think from your experience that where the occupier is the "owner" the land is better cultivated than land which is merely in the occupation of a tenant?—I have been informed that that is so; I have no opportunity of knowing myself, inasmuch as I have never returned to the farm when once I have inspected it.

7950. You have had no experience since?—I have had no experience since, but I believe the tenants, since they became owners, are making more improvements, from what I have heard.

7951. From what you have heard you believe that where the occupiers have purchased their holdings they are making greater improvements than on the other holdings in Ireland; that is where the occupiers are not the "owners"?—Yes, I believe so; that is the result of the information I have got, in a general way; I do not mean to say it is so in every case.

7952. No, but in a general way. You have stated that you would be in favour of reducing the term for the revision of rents from 15 years to a shorter period?—I would; I would say to 10 years; about 10 years.

7953. Why would you prefer 10 to seven?—Where prices fluctuate so much as they have in the past, I think we could more fairly estimate what would be the fair rent for 10 than for 15 years, judging of the past.

7954. Why would you prefer 10 to seven?—I think if you fixed it at seven you would have too much time lost in every way in revising the valuations from time to time. Ten years would admit of two five-course shifts on the farm, and I think 10 would be more reasonable than seven. I would be disposed for 10.

Mr. *M'Cartan.*

7955. With reference to the prices sent to you by the Land Commission, do you know how they are made up?—I have been informed at the Land Commission office that as regards the Dublin markets, the prices are obtained from some of the principal sales-masters weekly.

7956. I observe in the return here with reference to the prices of butter, which is a very material element, they generally give the price ending for the quarter, the 31st March; is not that the time of the year when butter is dearest and scarcest?—Yes, it would be, but the average is not taken of the quarterly returns to which I refer; it is taken from the yearly average, adding the four quarters together; I can give you the average if you wish.

7957. I think

Mr. *M'Cartan*—continued.

7957. I think we will reserve that until some person from the Land Commission comes. You say that you do not pay much attention to the evidence given as to value either by the valuers of the landlord or of the tenant?—Really I have found that the valuers on both sides have gone so much into extremes, both on the part of the tenant and on the part of the landlord, that I do not pay very much attention to them. I have had a long experience myself in farming operations, and would not be likely to be influenced by extreme evidence.

7958. I suppose you take the same view in fixing a specified value?—I have never fixed a specified value but in one case, I think.

7959. But you would take the same view, I suppose, as to the estimate given by the tenant's valuer and by the landlord's valuer?—Well, not having had more experience, I cannot say what their evidence would be.

7960. Do not you think it is a pity, when it is given in evidence here that little or no consideration is given to the evidence in court, that the parties should be put to the expense of bringing valuers to the court?—I think there is a great deal of money wasted in bringing them there.

Mr. *Brodrick.*

7961. You stated, in answer to Question 7899, that you thought rents could be settled in a great many cases without the tenants coming into court again when they have already got a judicial rent fixed?—I think so.

7962. Have you anything in your mind as to the process by which that might be done?—Yes.

7963. Would you mind stating it?—First, I classify the tenants; those who have not been in court up to the present time should go into court, and I would not deal with their farms in the way I propose; those who have been in court, and where the tenant or landlord or both require a readjustment of the rent at the end of 15 years, or other period, I would have two valuers sent down to inspect the farm and the improvements. To them should be furnished the details of the improvements that were proved in court, and the allowances made for them at the time the rents were fixed. If the two valuers happened not to agree upon the allowances for improvements, or on the fair rent question, I would have a third appointed by the Land Commission, and I am not disposed to make anything final. I wish to give all parties a power of appeal, but I think it would not be unreasonable to make their decision final. If any law point cropped up, I would have them to retire from the farm immediately, and let the party go into Court before the Sub-Commission. I think the great bulk of the rents could be adjusted in that way, and save a great deal of time and trouble; that is my opinion; I have considered the matter, and that is my view of it.

7964. In fact, you would fix the rents where they have been fixed before, very much on the principle of an arbitration, two valuers and an arbitrator?—Yes.

Mr. *Brodrick*—continued.

7965. Who would you have as the arbitrator, would you have a Sub-Commissioner, or the legal Sub-Commissioner?—No; a lay valuer, sent down by the Land Commissioner; a third. If any point of law were raised with which the arbitrators felt they could not deal, I would let them withdraw from the case, and let it go before the Sub-Commission Court.

7966. Would you be in favour of the same Sub-Commissioner going over the holding, or the same valuer going over the holding, who had gone over it before, if possible?—I think it does not necessarily follow that they should. All the valuers of the Sub-Commissioners have fallen now very much within the same lines as regards the valuation; I think it would be important if the same valuers were confined to the same district rather than to have two men here to-day, and then to send them to the North of Ireland to-morrow. I would much rather have them to deal with the cases in the county about them, or the province as the case might be.

7967. You think you would get greater uniformity?—More uniformity. I have found a great want of uniformity in going over the rents, particularly in the question of proximity value, for, as a court valuer, I have had an opportunity of comparing the rents fixed by Sub-Commissioners on one side of a fence with those fixed in the other, and particularly in the proximity question. I have found a want of uniformity some years since; latterly I have not.

7968. When you have been struck with want of uniformity, have you been struck with the want of uniformity in the different bias of the men; I mean has one man been considering the land worth more than another owing to the different methods on which they assess?—I can only deal with the land before me as I see it.

7969. You consider that no procedure based upon prices, or anything of that kind, would be satisfactory?—I think not; it would not be satisfactory to the tenant.

7970. What you wish to avoid is the re-hearing in court and the attendant expense?—I wish to avoid expense and delay. I think it could be done quickly, and done as well as in any other way; that is my view of it. It is my own individual opinion.

7971. In the same way, with regard to fixing specified value, you would allow that process to be continued, would you?—If the landlord will not be prejudiced in so far that he would have no opportunity of again having the value fixed, I would be in favour of fixing a specified value; otherwise I would not. I would leave it to have the true value fixed when the landlord was in earnest about buying; he would be bound by his proposition to have the true value fixed.

7972. You look upon the fixing of specified value to some extent as a check to excessive values of tenant-right, do you not?—As a check upon the price the tenant would get for his interest; is that what you mean?

7973. To that extent it is a protection to the incoming tenant?—I do not see how it acts as a protection to the incoming tenant to have the specified value fixed, because it is for the land-

Mr. *Brodrick*—continued.

lord to have it fixed for the right of pre-emption; he could rent his land subsequent to that when he got possession of it.

7974. Let me put it in another way: the landlord is not entitled to competition rent, he gets a "fair rent"?—He gets a "fair rent."

7975. Do you contend that the tenant, for the chance of good soil and cultivation, should be forced to pay to come into his holding a fair value or a competition value?—On the rent question, you mean?

7976. The tenant-right I am speaking of now; the law has provided the tenant with a fair rent and not a competition rent; now, in coming into the holding do you think he should pay a fair value or a competition value?—A fair value; the Legislature that fixed the one fixed the other.

7977. With regard to the town-parks, is it your opinion that they should continue, as at present, to be excluded from the Act?—In the majority of the cases the owner of the town is the owner of the parks and the owner of the parks is the owner of the town, and I think it tends to increase the value of the property in the town and the improvement of the town that the town-park should not be brought within the purview of the Land Act.

7978. And with regard to the development of the town, I presume that if you established a heavy tenant-right on the town-parks, that would be hindered, would it not?—In my opinion it would.

7979. Has your attention been drawn to a paper handed into this Committee by Mr. W. F. Bailey with regard to agreements made out of court, and the rents subsequently fixed?—I have read it.

7980. There, in the counties of Down, Armagh, Monaghan, and Cavan, do you think the cases which he has given are a fair sample of cases over the whole of Ireland?—You refer to the cases, I presume, where agreements were signed and agreed to voluntarily by landlord and tenant, but not registered, and these tenants came into court? I have no opportunity of forming an opinion upon it; I could not criticise it.

7981. Have you had no opportunity of forming any opinion as to the reasonableness of the agreements made between landlord and tenant?—No; no case came before me; I cannot criticise it.

7982. Have no such cases come before you?—No, not one that I can call to mind.

7983. You have fixed rents very little in Ulster?—Very little; I have fixed no rents in Ulster; I attended a few appeal cases; I visited a few farms on appeals in Donegal and a few in Londonderry, but not very many.

7984. Therefore any replies you made just now to Mr. Sexton with regard to rents fixed in Ulster would not be from your personal experience?—No, I mentioned that I had very little to do with Ulster.

7985. With regard to improvements, do you find that, as a rule, the tenants' claims to improvements brought before you are sustained?—As a rule there are improvements made, but as regards the cost of the improvements, they are very often estimated very high.

Mr. *Brodrick*—continued.

7986. It is not your experience then that, as a rule, anything is lost for want of asking; the value of the improvements is not lost by mistake?—Certainly not.

7987. And you have found, I presume, in many cases, like other Sub-Commissioners, that many of those claims are not non-existent, but that the money spent upon them at present is worthless?—Well, I cannot say "that the money spent upon them" is worthless; if the whole of the money that is stated to have been spent were spent, it would have been thrown away, a good part of it, but in the great majority of cases some improvement is effected, some more, and some less.

7988. As a rule, do you find that a tenant has any difficulty in bringing people to swear to improvements?—I have not had much experience of that; but for the 15 months I sat as Assistant Commissioner he had not.

Mr. *Leese.*

7989. You said that in making your valuations for the Court of Appeal you did not trust to any principles or set of principles, but rather your own discretion and experience?—Entirely my own discretion and experience. When I say "entirely," of course I would consider all that was put before me; I would give it full consideration, and then I act on my own judgment in the matter.

7990. The one question I want to ask is this: Do you think it possible, having in view the various matters you have to consider in forming a valuation, to lay down a set of principles to guide you as to improvements?—No; there are so many circumstances you must take into account.

7991. If you were asked to draw up a set of rules, to guide the valuers for the Court of Appeal, you would say you could not do it?—I would.

Mr. *Clancy.*

7992. I gather from your answer to Mr. Brodrick, you are in favour of the restriction of town-parks?—Yes.

7993. On the ground that otherwise the improvement and extension of towns would be interfered with?—I think so; I think it is in the interest of a town that town-parks should not be brought under the Land Act.

7994. Do you know of any town in Ireland which has been injured in that way?—Oh, no, because the town-parks are exempt.

7995. Do you know any case in which lands formerly town-parks have been held not to be town-parks, and rents fixed upon them?—Rents fixed upon what were claimed as town-parks?

7996. Yes. Do you know of any town in Ireland which has been injured in that way?—I cannot call to mind; there is no opportunity of knowing.

7997. Do not you know that it is the unwillingness of the landlord in almost every case to grant sites for buildings which has alone operated to the disadvantage of the town?—I am aware that it has operated to the advantage of the

Mr. *Clancy*—continued.

the town where the landlord was in a position to give a small park.

7998. Do not you know it is to the disadvantage of the town to refuse to give such parks, say, as sites for building?—It would be a disadvantage to the town.

7999. And do you know that this often happens?—I do not.

8000. What part of the country are you most acquainted with?—I have been working on the Land Commission in Munster, Leinster, very little in Connaught, and very little in Ulster.

8001. Do you mean to say that you know no case where the action of the landlord has prevented a development of the town?—I do not; I cannot call to mind one instance of it; there may have been such cases, but I do not know of them. I believe if most of the parks over two or three acres were made smaller and distributed, it would be to the advantage of the town.

Mr. *Clancy*—continued.

Mr. *M'Cartan.*

8002. Do I understand you to say that you, as a court valuer, went down to Donegal to revise the rents fixed by two lay Commissioners who knew the place?—I do not know whether the two lay Commissioners knew the place or not; I was sent down to a couple of cases in Donegal with my colleague Mr. Headech.

8003. And you had no experience in Ulster yourself?—I had no experience there.

8004. Had your colleague?—I cannot answer for him, but I believe he had; I think I heard from Mr. Greer that Mr. Headech acted with him in the North.

Mr. EDWARD GREER, is called in; and Examined.

Chairman.

8005. You were appointed chairman to a Sub-Commission in 1881?—In 1881.

8006. The legal chairman?—Yes.

8007. And you have been appointed as legal chairman on Sub-Commissions ever since?—Ever since.

8008. In various parts of Ireland?—At present in 11 counties of Ireland; formerly, principally in Ulster.

8009. Have you served in 11 counties then?—Yes; I have served in 13 counties altogether, but I am at present delegated to 11 counties.

8010. Which are the 11 counties?—Sligo, Mayo, Galway, Roscommon, Leitrim, Tyrone, Cavan, Monaghan, Derry, Donegal.

8011. You are a solicitor, not a barrister, I think?—I was a solicitor.

8012. You were a solicitor; I mean you were the chairman of the Commission that decided the famous case of Adams *v.* Dunseath?—I was.

8013. What were the grounds of your decision there?—The simple point that was put before the court in Adams *v.* Dunseath was this: whether or not Adams was entitled to be allowed for a house and certain other improvements which had been effected during the currency of the lease, and the case was presented to the court as an Ulster tenant-right holding; when it subsequently went to the Court of Appeal, it was not presented to the Court of Appeal as an Ulster tenant-right holding; I decided the case as an Ulster tenant-right holding, and I gave the tenant the house and the improvements.

Mr. *Dillon.*

8014. Was it on that specific ground, that it was an Ulster tenant-right holding?—It was on that specific ground; and I did it upon this ground: I considered that I was administering a remedial statute, and that the tenant before that statute was passed would have been entitled to have sold that holding with the house and the improvements upon it; I felt I could not, under that statute, put him in a worse position than he was in before the Act was passed.

Chairman.

8015. That was the foundation of the decision?—That was the foundation of it.

Mr. *Macartney.*

8016. On the assumption that it was an Ulster tenant-right holding?—Clearly so, that was not denied.

Chairman.

8017. Other points have come before us; I would like to go through some of them, and ask you what you have to say upon them. We have had a great many questions and answers upon sub-letting?—Cases of sub-letting frequently come before the court; in some cases trivial sub-letting, and sometimes they are more substantial.

8018. In your view, is the law as it stands, or as it is habitually administered, on a satisfactory footing about sub letting?—I do not think so.

8019. In what respect?—I am of opinion that where the sub-letting has taken place and has been in existence for some years, and where it does not prejudice the landlord, there should be a discretion in the Sub-Commission to admit the tenant notwithstanding the sub-letting. There are many cases that have come before me where I could not discover that the landlord was in the slightest degree prejudiced; but I was obliged to dismiss the application.

8020. On the question of triviality, would you leave that in the discretion of the Commission?—I would be disposed to leave that in the discretion of the Sub-Commission; I do not think it is a matter that is so much for a Court of Appeal.

8021. Would you have no appeal?—Not on the question of triviality; it is so much a matter of discretion that I think the Sub-Commissioners who see the holding, and see what effect the sub-letting has upon the holding, are as capable judges of whether it is a trivial sub-letting or not as the Court of Appeal would be.

8022. Are you of opinion that sub-division should be permitted in any case at all?—Yes.

Chairman—continued.

8023. In what sort of cases?—There are some very great cases of hardship in sub-division.

8024. Will you give us one or two examples?—For instance, a father has two sons living with him; he is an old man, and the sons have been probably working the holding with him for 15 or 20 years; they have both families upon the holding, they have separate houses, perhaps under the same roof, so to speak; the father dies, and one of the tenants comes into court; I am obliged to dismiss the application because the tenant is not in sole occupation of the holding.

Colonel *Waring.*

8025. Who, the father?—No, the father is dead at this time; one of the sons. Then I propose sometimes that I should fix the rent in the name of both to get rid of the difficulty; but that I cannot do without the consent of the landlord.

Chairman.

8026. Is that consent often given, or refused?—It is almost invariably refused.

Mr. *Macartney.*

8027. Are these cases confined to cases where the receipt for the rent is made out in the name of the representatives?—Yes, very often in the name of the representatives. Of course if it were made out in the name of one of the tenants I could fix the rent, or if made out in both names.

Colonel *Waring.*

8028. They are usually the result of an old lease, are they not?—Oh, no, they are very often tenancies from year to year.

Chairman.

8029. Give us another example where you think a hardship arises from your not being able to deal with subdivision; you have given us a case of a father and two sons?—That is the principal case that does arise.

8029*. Of course you know the objection in policy; the danger that would arise from anything like a free permission to sub-divide in Ireland. It has done a great deal of harm in the past, has not it?—It did a great deal of harm in the past, when the population was much greater than now, but I do not think the risk is so great in late years; there is not so much risk.

8030. You are not afraid of that?—No.

8031. Town-parks: we have had a great deal of evidence as to the effect of that exclusion or restriction; what have you to say upon it?—Well, I should be very much disposed almost to do away with town-parks altogether.

8032. You mean to do away with the exemption?—To do away with the exemption altogether, and allow the Commissioners to fix the full fair rent upon the town-parks; whatever they were really worth as agricultural holdings.

Mr. *Macartney.*

8033. As "agricultural"?—Yes.

8034. Not as accommodation?—Of course there would be an accommodation value upon them, a proximity value.

Chairman.

8035. On improvements; that does not of course come within your particular function as a Legal Commissioner. Have you any opinions, however, upon the subject of improvements, and the working of the Act as designed to protect the tenant's improvements?—The system at present has been very fully gone into by Mr. Bailey and other Commissioners, and it is the system I adopt, but I suggest myself that although it is the mode in which value is arrived at it is not the correct mode; I may be singular about it.

8036. Where do you find the evil?—I think it is an evil in this: I think the Ulster tenant stands in a different position to tenants in other parts of Ireland. I look upon him more as in the light of a partner with his landlord, and I would be disposed, as a valuer, to value the Ulster tenant-right holding as an equipped holding in the first instance, as a going concern, as a running machine; and from that I would deduct the value of tenant's buildings and the value of the tenant's other improvements, and arrive at a fair rent in that way. The system, as you have been told, is, to leave out the buildings altogether, value the land, and then deduct the improvements that are in the land. I should value the whole as a going concern simply.

Mr. *T. W. Russell.*

8037. It is another method simply?—It is another method.

Chairman.

8038. You say that in Ulster landlord and tenant are regarded as, to some extent, partners; do not you think the same description might apply to all tenants in Ireland under the Act of 1881, that the idea of partnership is distinctly introduced by that Act, as much outside Ulster as in Ulster?—It is; but I think there is perhaps a greater interest in one of the partners in Ulster than outside Ulster.

8039. How would you deal with appeals; we all agree that there must be appeals upon points of law, all the witnesses have agreed upon that?—I was examined before the Cowper Commission, and I repeat now what I said then, that I thought it would be better to do away with all appeals, except upon questions of law.

8040. How would you carry it out?—I should not give any appeal upon the question of value at all.

8041. What would be your suggestion as to the process; how would you settle the matter?—I should make the decision of the Sub-Commission on the question of rent final.

8042. Upon all questions, except upon points of law, you would make it final?—Final.

8043. What ideas have you got upon the fixing

Chairman—continued.

ing of fair rent in the future; do you think the present system so satisfactory apart from appeals that we cannot improve it, or have you any suggestion for improving it?—That is a very difficult question, but I think there is no system which will give satisfaction, except the system of fixing rents through the courts; and I would anticipate that in the future that work will be much more rapidly done than it has been done in the past.

8044. Have you any faith in sliding scales or any other automatic process?—No, none; I do not think it would satisfy the tenants.

8045. As to the statutory term, do you think 15 years is too long?—I do.

8046. What would you say?—I should say 10 years or seven years.

8047. Which do you think the better?—I think seven would be better than 10.

8048. Would you have any apprehension that a comparatively short term like seven years would disturb the country, as one or two witnesses have said?—No; on the contrary, I think it would have the opposite effect.

8049. The present administration of the Act, would you say it is very technical?—I think it is much too technical.

8050. In what particular?—I think the exemptions and exceptions and the decisions of the courts have rendered it much too technical.

8051. Have you any suggestion as to a possible improvement in the report of the lay Commissioners?—I agree with the other witnesses; I think the report of the lay Commissioners should give every information that it is possible to give, both to landlord and tenant. In addition to all that it states at present, I think it should state in figures the improvements that have been allowed, the number of perches of drains, the number of perches of fences, the amount of reclamation, and the price that has been allowed under each of these different heads.

8052. You would have that stated in open court?—I would have that stated in the return.

8053. But when the Sub-Commissioners were making their award would you have them state the elements, the grounds of their decision?—In the report I would.

8054. In detail?—In detail.

8055. Have you anything to tell us about purchasers in the Incumbered Estates Court. It does not come under our reference, but I understand you have something to say which you think is within our reference on that subject?—I do not know. That case of Adams *v.* Dunseath was a purchase under the Incumbered Estates Court, and in that case, as in many cases in which the owners purchased under the Landed Estates Court, I have found that the rents immediately after the purchase have been very much increased; within six and 12 months the rents have been immensely raised.

8056. That is the point you wish to make?—In Adams *v.* Dunseath, for instance, Mr. Dunseath purchased a rental of 316*l.* a year on the Mountcashel Estate for a sum of 6,000*l.*; that was in 1851; and when I came to deal with the holding of Adams in 1881, it was proved before

Chairman—continued.

me that that rental had been increased from 316*l.* to 560*l.*

8057. In what number of years?—From 1851 to 1881; 30 years.

8058. One thousand eight hundred and fifty-one to 1881, it was raised from 316*l.* to 560*l.*?—Yes; but it was raised immediately after the purchase. On another portion of the same estate the purchaser was Mr. Graham, an adjoining town land or town lands; he purchased a rental yielding 91*l.* 13*s.* 6*d.*, and he paid for that 1,600*l.*; and within a few months he raised that rental of 91*l.* 13*s.* 6*d.* to 167*l.* 8*s.*

8059. Other cases of a similar kind come before you?—A great many.

8060. I suppose, however, it is admitted that that was the course of proceeding as the result of setting up the Incumbered Estates Court?—It was. Rentals of the Incumbered Estates Court on these estates that have been raised have been produced in court, and I have frequently found the observation on them, that the tenants hold under short leases at moderate rents, and that when these leases expire the rents could be raised considerably.

Mr. *T. W. Russell.*

8061. You have stated that you are in favour of shortening the statutory period?—Yes.

8062. Have you any preference as between seven and 10 years?—Not much; I think, perhaps, seven would be the better term.

8063. You are aware that seven is in the Scotch Crofters Act?—Yes.

8064. The Chairman has not asked you anything about the Rent Redemption Act. That measure is within our reference; have you had any experience under that?—Yes, I have.

8065. Did you ever try a case in county Derry, —— Alexander, landlord, Adams, tenant. It was settled before the Court of Appeal the other day. It was a case decided under Rattey *v.* Kelly, where there was a small part of the holding separate from the main part. Perhaps, if you look at that, you will be able to identify it. Just look at the Report (*handing same to the Witness*)?—I believe I heard this case at Coleraine; I had forgotten it, I did not know there was a decision given by the Court of Appeal in it; it must be very recent.

8066. Wednesday last. You ruled it out under Rattey *v.* Kelly?—I did; yes.

8067. As regards the general principle of the Rent Redemption Act, I believe that no fee-farm grants made before the year 1860 can come under it?—None.

8068. That is on the legal ground that the relation of landlord and tenant did not exist in these cases?—That is so.

8069. Do you think that that should stand?—No, I think that is a very unfair anomaly. I do not see why a man who has got a fee-farm grant in 1861 should be in a different position from a man who got his grant in 1860.

8070. Of course the people who are excluded are excluded simply from defective draftsmanship in the Act. Do you notice what the Lord Jus-

Mr. *T. W. Russell*—continued.

tice said there. I read it because it is important. Lord Justice Barry said "it was a peculiarly hard case, as the drafter of the Redemption of Rent Act evidently in framing the first section was either ignorant of the existence of fee-farm grants before 1860, or was forgetful of the fact. Such grants were few, and ought to have been within the Act"?—Yes.

8071. You agree with that?—I do.

8072. Now as regards the Rent Redemption Act, there are two classes of cases dealt with, perpetuity leases and fee-farm grants?—Yes.

8073. Now with regard to perpetuity leases, first: are the tenant's improvements confiscated in the case of a perpetuity lease?—They are by the decision.

8074. Then if the landlord insists upon having a fair rent fixed, that is to say, if he does not consent to redeem the rent, and the case goes before you as a case for a fair rent, the two Sub-Commissioners who go upon the farm in these cases have to give the landlord in the shape of rent the whole of the improvements existing on the farms, no matter what they are?—Certainly.

8075. Buildings, drains, whatever they may be, all go to the landlord?—They value the farm in that case as they find it with everything upon it, and they deduct nothing.

8076. And therefore the tenant's interest in that farm is completely confiscated in that case?—Certainly; that is the result.

8077. That is the result. Now, as regards fee-farm grants, it is the same, is it not?—Yes.

8078. That is the second class of cases dealt with?—Yes.

8079. The same state of affairs exists?—Yes. Bearing upon that I recently heard a case, McCrea *v.* Hamilton, which illustrates both the points you have put to me. It was a county Londonderry case. I heard it at Strabane, and it was a very peculiar case. It was a case in which a sum of 1,560*l.* had been paid as a fine; it was contributed by the tenant. In that case the father of the tenant had been tenant prior to 1867 under a person named Hutton, at the yearly rent of 247*l.* 17*s.* 11*d.* Hutton's interest was put up for sale in the Landed Estates Court, and Hamilton, the present landlord, became the purchaser at 5,560*l.* On the occasion of the sale the present tenant entered into an agreement with Hamilton that if he (Hamilton) became the purchaser for any sum over 4,000*l.*, he (McCrea) would take a fee-farm grant of the holding at 200*l.* a year, and pay to Hamilton the difference between 4,000*l.* and the amount of the purchase-money.

8080. As a fine?—Do you follow me?

8081. Yes, I follow you?—Whatever that sum might be. Hamilton purchased at 5,560*l.*, and McCrea thereupon paid the sum of 1,560*l.*, and accepted a fee-farm grant, receiving a rent of 200*l.* per annum. The two questions that arose in the case, and that were argued before me, were, first as to the fine, and the other as to the tenant's improvements, which were very considerable. I decided, upon the authority of Cooper *v.* O'Neill, that the tenant was entitled to get credit for interest on the sum of

Mr. *T. W. Russell*—continued.

1,560*l.*, and I refused, as I was bound to do, on the authority of O'Hea *v.* Morrison and Doherty *v.* Mollan, to entertain the tenant's claim for buildings and improvements. The result was that my colleagues differed from me as regards the fine.

8082. Your lay colleagues?—My lay colleagues; they differed from me as regards the fine, and they declined, for reasons that I could not follow, to make any allowance in respect of the fine.

8083. Was that a question of law, may I ask?—That was a question of law.

8084. Your two lay colleagues, who knew nothing about law, over-ruled you; go on please?

Mr. *Clancy.*

8085. Who were the two?—The two were Mr. Jephcott and Mr. Garland. They found that the full annual value of the holding, including the buildings which were erected by the tenant, was 160*l.* per annum. From that they allowed 15*l.* for flooding (it was very badly flooded by the River Foyle), and in consideration also of the tenant paying the entire of the poor rate, they fixed the judicial rent at 145*l.* Now, if Mr. Justice O'Hagan's view of the law in Cooper *v.* O'Neill is correct, the tenant there, in my opinion, was clearly entitled to a further substantial reduction in respect of the fine.

Mr. *T. W. Russell.*

8086. Well, taking the Rent Redemption Act as it stands, is it your opinion that the leaseholders under that Act and the holders of fee-farm grants should come into court on the same terms as other leaseholders, that is leaseholders holding for a period of 99 years?—Certainly; they are in a worse position than the leaseholders under the Act of 1887, and they are in a much worse position than a tenant from year to year under the Act of 1881, although they are holding under fee-farm grants.

8087. Have you had any experience of mill holdings?—Yes; I have had a great many of those.

8088. Principally in Ulster, I suppose?—Principally in Ulster.

8089. I believe these cases of mills mainly arise in Ulster, the mill holdings?—They mainly arise in Ulster.

8090. Take the case of a holding that you are forced to rule out of court, because there is a substantial mill upon it, and assume that that decision is a proper decision, and one that is intended by the Act of Parliament; that mill ceases to work owing to the failure of the milling industry, or it is burnt down and the man comes into court again, are you entitled to take into account the fact that the mill has ceased to work, or has been burnt down, or must you still hold that the holding is not entirely "agricultural"?—Well, that depends upon circumstances; of course circumstances govern all these cases.

8091. Yes?—If we found that the mill was useless, valueless, and we had evidence before us that it would not pay to rebuild it, that there

was

Mr. *T. W. Russell*—continued.

was nothing there but the water power, and that it was a tenancy from year to year, and that there was nothing in the lease which described it as a mill holding——

8092. Take the case of a lease first?—Taking the case of a lease which did not demise it as a mill holding; in a case of that kind I would fix a rent, and put some small value upon the water power.

8093. If demised as a mill holding would you do that?—If demised as a mill holding then my hands are tied.

8094. Although the mill has ceased to work?—Although the mill has ceased to work.

8095. Or been burnt down?—Or been burnt down.

8096. If it were a yearly tenancy you would take the case on the merits?—Well, it would not make very much difference in Ulster, you know, whether it were a lease or not. They both come before us now in the same way whether under a lease or a tenancy from year to year. I only mention a lease because the lease might contain some covenant or description as to a mill holding, which you would not have in the case of a tenancy from year to year.

8097. Do you think there is hardship attending these holdings?—I do; I do not see why rent should not be fixed upon them; the landlords get the agricultural rent and have the thing settled. It is of no interest to anybody not to have it settled.

8098. That is to say, you think it would be possible to fix a fair rent, taking all the circumstances into account?—Certainly.

8099. And that it ought to be done as in an ordinary case?—If there was a mill on it and a man doing a small trade in it, I do not see why the Commission should not fix a rent upon the thing as a whole.

8100. Now upon the question of sub-letting, have you had much experience of the question of cottier tenants?—Yes.

8101. They differ from ordinary labourers?—They differ from ordinary labourers, yes.

8102. What is the provision of the Act in regard to cottier tenants?—The provision is that if the tenant has made a sub-letting to a cottier tenant, the tenant is excluded; if he has let to a cottier tenant he is not the tenant of his holding.

8103. Do you find a great many of these cases in Ulster?—I do find a great many of these cases in Ulster. There are an immense lot of buildings, erected all over Ulster since the time of the plantation, that you do not find in any other part of Ireland.

Mr. *Macartney.*

8104. What section of the Act of 1881 relates to the exclusion of the cottier tenant?—It is the cottiers' section.

Mr. *T. W. Russell.*

8105. There is a difference between the cottier and the labourer, is there not?—Yes. A man might have six cottier houses, particularly in Antrim, where probably they were occupied

Mr. *T. W. Russell*—continued.

by hand-loom weavers some years ago, when that industry was a very flourishing industry, where a man very likely had two or three of his sons in these houses, all working at hand-loom weaving. That has ceased. It has all gone into large mills. The tenant now is very glad to get a sub-tenant for those cottier houses; he may get a carpenter, a blacksmith, or some person to occupy them, and pay him 6*d.* or 1*s.* a week, which assists him in paying his rent.

8106. Then you do not think that these cottier tenancies ought to exclude from the Act?—Clearly not. I think that they all go to make up the landlord's rent, and it is to his interest to have as much building on the holding as he can.

8107. Now as regards sub-letting: Would you say that the whole question ought to be left to the discretion of the Commissions; is that your view?—It is; I think it should be left entirely to them. I think they are the best judges of it.

8108. Now on the question of the presumption with regard to improvements, have you anything to tell the Committee upon that?—Well, I think it makes very little difference whether you have presumption or not. From the course we pursue in court we really require everything to be proved as in any other court.

8109. You require everything?—We require everything to be proved except the buildings in Ulster.

8110. The presumption is in favour of the tenant with regard to these, and you do not require proof of buildings?—We do not require proof; we leave them out of the valuation altogether.

8111. Outside Ulster you have told us; what is the action of the Commission inside Ulster; what is the ruling with regard to presumption; does it differ?—No, I just require the same proof in Connaught as I require in Ulster. I require everything that the tenant claims to be proved, everything that we cannot see.

8112. That you cannot see?—Yes.

8113. Then the difference really is between any improvements that you can see and improvements that have to be looked for?—Yes, the real difficulty with the tenant is proving improvements that have been made by his predecessor, improvements that he cannot give evidence of.

8114. That is to say he cannot give legal evidence?—He cannot give legal evidence. A tenant in Ulster probably has given 500*l.*, 600*l.*, 700*l.*, or 1,000*l.* for his holding; the person from whom he purchased emigrates; and when he himself comes into court he has no evidence whatever of those improvements.

8115. Tenancies change a good deal in Ulster, I believe?—Very much. Again, a man dies, and there is no one left to prove these things, and we have to exclude them; we have to rule them all out.

8116. You having met these cases so much, have you any idea in your mind to guide us in coming to a conclusion upon these matters?—Yes.

Mr. *T. W. Russell*—continued.

8117. It is quite clear you cannot lump things?—No.

8118. What is your proposal in regard to it?—I will take an Ulster tenant-right holding, because I am more familiar with that.

8119. Yes; start with that?—In a case where a tenant has given notice to his landlord that he is going to claim 10 acres of drained land, for instance, he comes into court and he says: "Ten acres of my farm have been drained; I cannot prove it; I did not see it done, and I cannot produce to you any witness who did see it done," but when the Commissioners go upon the land, if they find it is drained, and they can easily ascertain whether it has been drained or not by opening portions of the drains, and by looking at the outlets. Any experienced man, can tell really whether the land has been drained or not by looking at it, that is, if it has been efficiently done.

8120. The fact of the matter is, you would assume it had been done by the tenant, unless the landlord proved the contrary?—If he swore it had been drained, and the Commissioners found it had been drained, I should allow them; I would ask for no further proof; I would put the onus on the landlord to show that he had contributed towards the drainage or done it himself.

8121. As a matter of fact, we may take it as a rule that, so far as you are concerned, presumption, apart from buildings, matters very little, and that the tenant has just to prove his case in court in this respect as he has in any other?—He has; he is met at every point, and put to the strictest proof.

8122. Now, what about town-parks; do you think there would be any difficulty in fixing a proximity value and an accommodation value in these cases?—None whatever.

8123. You would abolish them altogether?—Yes.

8124. Treat them as ordinary agricultural holdings?—Yes, I would.

8125. May I take it that the case of Adams *v.* Dunseath really has no application to an Ulster holding?—None whatever.

8126. Is that your view?—That is not only my view, but, since the decision of the Court of Appeal, I have had numerous cases in which the same point arose, and I have decided them as if the Court of Appeal had given no decision.

Chairman.

8127. These were Ulster cases?—Ulster cases, and I have decided them on the broad grounds I have already stated, and I have asked counsel to take an appeal upon the matter and let it be settled as to whether that decision does or does not apply to an Ulster tenant-right holding. There has never been an appeal.

Mr. *T. W. Russell.*

8128. That carries out Lord Chancellor Law's view as stated in court?—Clearly. I am sure you will have observed, in reading the decision of the court in Adams *v.* Dunseath, that two or three of the judges there guarded themselves upon that very point. Lord Justice FitzGibbon said that he was not to be understood as deciding the case as an Ulster tenant-right holding, inasmuch as it had never been stated in the case presented to them, nor stated at the bar, that it was an Ulster tenant-right holding. Lord Morris said the same thing.

8129. Do you understand any reason why, the Ulster tenant custom having been proved in your court as you have told the Committee, and the judges taking that view of it in the judgment in the Court of Appeal, it is not mentioned in the Court of Appeal?—I should rather you had asked Lord Justice FitzGibbon that question; I could not answer it.

8130. As to future procedure, did you hear Mr. Bailey's evidence?—I did; I think there is a good deal in what Mr. Bailey proposes.

8131. That is as regards non-contentious cases?—That is as regards non-contentious cases; but at the same time I do not believe, as I have said before, that any system of fixing rents in Ireland will give satisfaction unless it is done in the light of open day, and in court. These agreements you have heard about, a list of which I see Mr. Bailey handed in, are constantly cropping up before me, and the evidence about them is that the tenants did not know what they were signing; they were signed at the agent's office very often, signed before a poor-law guardian, and they never read them or knew anything about them; and I have been obliged repeatedly to dismiss these cases, and I could not convince or explain to the satisfaction of the parties why it was I did dismiss them; they could not understand it. A great many of these agreements were made while the Donoughmore Commission was sitting in the early years of the administration of the Land Act.

8132. There was a Committee of the House of Lords called the Donoughmore Committee (it was proposed by Lord Donoughmore), which sat in 1882 to consider the Act of 1881?—To consider the working of the Act.

8133. Is it your opinion that a great many of these agreements were the result of that Committee?—I believe that at that time, owing to that Committee sitting to inquire into the working of the Land Act, a few months after it had been passed, tenants in Ulster got alarmed; they thought the Act was going to be repealed, and they rushed and settled in many cases.

Mr. *Brodrick.*

8134. Did they know the state of parties in the House of Commons at that time?—I do not know really. I am only speaking of what I have heard, general rumour all over the country.

Mr. *T. W. Russell.*

8135. Then as regards future procedure you think as regards the non-contentious cases that there may possibly be a method of dealing with them apart from hearing in court; but as regards

Mr. *T. W. Russell*—continued.

regards the great bulk of the cases the tenantry would not be satisfied with anything short of inquiry in open court?—I do not think so.

8136. Now, as regards the question of improvements, we have had a great deal of conflicting testimony here as to procedure. May I ask you whether the Commissioners that you direct in valuing a farm for a fair rent allow a tenant a commission or a percentage upon his outlay for improvements; is that the first thing that they do?—That is the first thing; well, that is the second thing.

8137. What is the first?—The first thing is to get the gross value of the farm.

8138. First they find the gross value of the farm; then if there have been improvements made the tenant is allowed a percentage upon his outlay?—Yes.

8139. Is it your opinion that the percentage usually covers the whole transaction?—In some cases, and perhaps in two-thirds of the cases it does.

8140. Now, as regards the remainder, where there is an increased letting value over and above that which has been allowed for, what is the legal position of the question in those cases?—Well, the legal position is this, that the tenant gets nothing but the percentage on the actual cost of his improvement. I had a case at Mohill a few days ago, in the county Leitrim, and it was rather a peculiar case, though a small one. A man reclaimed three acres of bog-land; he had reclaimed it gradually during the last 15 years, and he asked to have it included in the area of his farm; the landlord objected, and said he had no title to it. I said I would inquire into the matter, and see how it stood, and after having heard some evidence I came to the conclusion that the man had been sufficiently long in possession to enable me to fix a rent upon it. Then came the question of evidence as to what this had cost. The valuer for the landlord stated that he valued it at 12*s.* an acre. I said, "What was the original value of that land before this man touched it?" He said: "A shilling an acre." Then I said: "What have you allowed him off that 12*s.* for his work in it?" He said, "I have allowed him 4*s.*" That 4*s.* and the 1*s.* made 5*s.*, and it was debited to the tenant at 12*s.* I said, "What have you done with the 7*s.*?" "Oh, that," he said, "I have given to the landlord."

Mr. *Macartney.*

8141. That was the landlord's valuer?—That was the landlord's valuer, and I said, "Are you quite right in that?" He said, "Well, I do not think I am, sir, right in it, but according to what is going on in London at present I cannot do anything else."

8142. What did you do?—I have not done anything in it yet.

8143. Are you going to be influenced by what he said?—I am only telling you the facts; it is still before me.

Mr. *Clancy.*

8144. What is the decision?—I have not given any decision yet.

Mr. *T. W. Russell.*

8145. Let me put it in this way: After you have fixed the gross value, after you have made the tenant the allowance to which he is entitled (and it is not disputed at all), the percentage on his outlay, where an increased letting value takes place over and above that, that goes to the landlord?—That goes to the landlord.

8146. Did you hear Mr. Roberts' evidence today?—I did.

8147. Did you hear him say that he gave it all to the tenant?—I did.

8148. He has never acted under you I suppose?—I think the tenant is better entitled to it than the landlord.

8149. That is not the point; I will put it in this way: In cases where you have decided, what has been your legal direction to the lay Commissioners in cases of that kind?—My legal direction has been for them to give a full percentage in a case of that kind; 5 or 6 per cent., if the work has been well done, upon the actual cost, but nothing more.

Mr. *Sexton.*

8150. Is it a percentage that you give, or is it an instalment intended to repay the cost?—As a matter of practice it is a percentage. It would be 6*l.* on 100*l.* worth of work, or 5*l.* on 100*l.* worth of work.

8151. Until the 100*l.* is repaid?—No, it does not operate in that way, because we only fix the rent for 15 years, and at 5 per cent. it would take 20 years to repay the 100*l.*

8152. Then suppose you enter upon it again at the beginning of the second statutory term, and the man had got 5*l.* a year for 15 years out of the 100*l.* spent, what would you do; would you just allow him enough to give him the remaining 25*l.*?—That is a very difficult question.

Mr. *T. W. Russell.*

8153. I have only one other question: Do you see any objection to inserting in the pink paper the amount that you allow for improvements?—No, certainly not.

8154. Can you tell us why that important particular should have been exempted from the pink paper?—I really do not know. The returns made by Commissioners have varied since 1881. We had a very bald form at first; then one with a few more points in; now we have got down to the "pink form," as it is called, and I do not see any objection to have another form which would give every information to both landlord and tenant.

8155. It is all in the field-book?—It is all in the field-book; there is no difficulty about it.

8156. The public cannot get the field-book, can they?—No, but I see it when fixing the rents.

Colonel *Waring.*

8157. You have told us that you think a 15 years' term too long?—Yes, I think it is too long.

8158. And that you prefer seven years, and not, as has been suggested, 10 years or more?—Yes.

8159. Does it occur to you the enormous amount of perpetual litigation that it would cause?—I do not think it would cause such "enormous" litigation.

8160. What do you call the proceedings before your court?—The proceedings before our court now are very different; they are not what they were seven, eight, or nine years ago. Tenants now come into court, three-fourths of them in the West of Ireland, before me, and state their case simply; they have no solicitor; I conduct the case and I have to examine them myself in three-fourths of the cases.

8161. Do you think that would work in the North-east of Ireland?—The North-east of Ireland would have to be dealt with probably in a different way.

8162. You have very great experience?—I have.

8163. As I have myself, in the North-east of Ireland; do you believe that a great many of them come without a solicitor?—They do; a good many do, and they think they do quite as well without one.

8164. Do I understand you to say that you object to cases being settled out of court?—I do not, at all. I have not the slightest objection to their being settled out of court; on the contrary, I wish there were more cases settled out of court.

8165. Are you not aware that cases being settled out of court leads to good feeling between landlord and tenant, and prevents a good many irritating statements being made?—It does up to a certain point. If a man has settled with his landlord, he will perhaps go on for twelve months, until a neighbour comes into court who gets a larger reduction than his landlord has given him; then he gets very dissatisfied.

8166. Do not you think that might also occur in the case of a decision of your own and the decision of another (I will not call it rival) Sub-Commissioner?—Some, I think, of the Sub-Commissioners have not been very uniform in their decisions.

8167. You talked about subdivision, and said it was a hardship upon the tenant if he had two sons living on the farm not to be allowed to divide his property between them?—Yes.

8168. How if he had four sons and two daughters, and two sons in America, that is not an uncommon thing at all, where do you draw the line?—Might I ask you which case I am to deal with first; with the two sons?

8169. Yes, with the two sons?—Very well, I find in some districts of Ireland the landlord says: "We will take the two tenants and allow you to fix the rent in the two names." That is very easily accounted for in some places, that gets two votes; in other places they object and say "No"; then the tenant cannot get the rent fixed.

Mr. *Clancy.*

8170. But there are no votes there?—No.

Colonel *Waring.*

8171. Now we will take the case of the two sons and yet another son who has gone to America; he has an equal right to share in the farm by law?—No, certainly not.

8172. He has by law?—But I could not recognise him; he is not in occupation. I can only recognise the two in occupation; it is only so far as they are concerned that there is any hardship.

8173. Do you think the man in America would not consider he had a right to his share?—But that man is protected. If the father has not died intestate he is probably protected by will. I could not fix a rent in his name, because he is not there, he is not occupying.

8174. You say that if 10 acres of a farm had been drained when the Sub-Commissioners went on it they would have the right to give an allowance for those drains provided they found they were working; now is it possible for them to tell whether they are working?—I think so; there is no difficulty about it.

8175. Suppose a Sub-Commission had visited a farm in the middle of last summer, do you think any living man could have told the difference between drained and undrained land, that is when no water was running?—He could not tell whether the drains were working, but I am quite sure many of the gentlemen who have been associated with me could tell whether any field was thoroughly drained from going into it. They certainly could see the outlets, whether there was water running or not; they could open all those.

8176. Did you ever hear of there being "Quaker" outlets? You know what a "Quaker gun" is; a "Quaker gun" is made of timber; a "Quaker" outlet is an outlet with no drains behind it. Did you ever hear of such a thing?—I have heard of such a thing.

8177. Do you think seriously that the tenants in Ireland ever heard one single word about the Donoughmore Commission in the House of Lords?—Seriously?

8178. Yes, that the tenants as a body ever heard of the Donoughmore Commission in Ireland?—Oh, yes; I have not the slightest doubt about it; it was a matter in which they were most deeply interested; they were reading the papers every day, as you must know; they could not but know all about it, and did know.

Mr. *Dillon.*

8179. You have worked a good deal in Connaught, have you not?—Latterly I have been in Connaught.

8180. Did you hear any case in the neighhood of Castlerea and that neighbourhood?—I have sat a good deal in Castelrea and Roscommon.

8181. Have you met many cases of small tenants in that neighbourhood who were prevented

Mr. *Dillon*—continued.

vented from getting a fair rent fixed?—There are a great number there who, I am afraid, cannot get into the Act.

8182. Could you give your experience, chiefly in the province of Connaught, of the causes which have operated in preventing the small tenants from getting their rents fixed?—In the neighbourhood of Castlerea, on two or three of the estates there, the tenants seemed to me to be in a very deplorable state; a vast number of them are mere caretakers; they are under eviction.

8183. When you say "caretakers," does that mean that they are in possession of their holdings?—They are in possession of their holdings, but they are not tenants.

8184. Are those cases where they have been served with the "eviction-made-easy" notices?—They have been served with an eviction notice under the statute, and allowed to go back as caretakers; then they have served their notice of application to the Land Commission Court. Those are a class of people who do not understand how it is that their cases are dismissed, because they say, "We have never been out of possession."

8185. Have tenants who are in that position come into court in considerable numbers, do you know?—There is a great number in Castlerea who are owing five, six, or seven years' rent, and until they get rid of that arrear and redeem possession they cannot possibly get the benefit of the Act.

Chairman.

8186. If they redeem, do they come back as "present tenants"?—They must redeem within six months to come back as "present tenants."

8187. I know; but suppose these men, after the service of the notice under what is called the "eviction-made-easy" clause of the Act of 1877, redeem, as you say, paying off the arrears, can they re-acquire the status of "present tenants"?—They can if they redeem within six months after the notice has been served upon them.

8188. If during the six months they have failed to redeem, then they never again can be "present tenants"?—Their status is gone.

Mr. *Dillon.*

8189. As a matter of fact, had most of the tenants who appeared before you in Castlerea had the six months' notice?—A great many of them, I think.

8190. Then I suppose I would be right in assuming that there are a vast number of small tenants in that position now?—There are a great number of tenants in Mayo and in Galway in that position.

8191. Have you any suggestion to make to the Committee as to how the case of these tenants could be dealt with?—The only way to deal with them is to deal with them as Parliament has dealt with the crofters; that is, to give the court power to deal with these arrears in some way or other; to compound them, and say what they should pay of the arrears.

8192. At all events, did it strike you that these cases were cases of hardship?—Very great hardship; peculiar hardship.

8193. With regard to town-parks, do you consider that the fixing of fair rents on town-parks would interfere with the development of the Irish towns, from your experience?—I do not think it would.

8194. I ask because we have had evidence given that it would?—I do not think it would so long as you reserved to the landlord the right to take up any ground that was required for building purposes. That a landlord can do at present after the expiration of the first judicial term, but not until after the expiration of the first judicial term; but I should say if he could show it was necessary for the improvement and development of the town within the judicial term he should be entitled to take it.

8195. Would you be prepared, as a Commissioner, to fix a fair rent on town-parks?—I would.

8196. Have you fixed specified value?—No; specified value never arises in Ulster.

8197. I mean have you fixed specified value on any holdings?—I do not think I have had more than two holdings in the west.

8198. Do you consider the fixing of the specified value any protection to the incoming tenant?—I do not at all.

8199. It does not protect him against the landlord asking any price he can get?—It does not. The landlord can sell for anything he likes, and he gets a tenant.

8200. You mentioned an instance in which you were over-ruled on a point of law by two lay Commissioners, who sat with you at Strabane, I think?—Yes.

8201. Was that recently?—Yes; that was the end of last year.

8202. Do you remember the names of the two Commissioners who sat with you?—Mr. Jephcott and Mr. Richard Garland.

8203. Had those gentlemen worked with you for long?—Mr. Garland had worked with me for a long time, Mr. Jephcott had not.

8204. Had he been recently sent?—Yes, within the last two years.

8205. He took the place of some other gentlemen on your Commission?—Yes.

8206. Is this an isolated case of lay Commissioners undertaking to overrule the legal Commissioner?—It is an isolated case, and in justice to them I should state that they did not look upon it exactly as a question of law; they took a different view of it.

Mr. *Sexton.*

8207. Was there an appeal?—I believe the case is under appeal. I have reason to think so from documents that have been asked for.

8208. It is not decided yet?—It is not decided yet.

Mr. *Clancy.*

8209. You explained to them the question of law, did not you?—I explained to them that I thought they were bound to give the tenant credit for interest upon the fine.

8210. As a matter of law?—Yes.

Mr. *Dillon.*

8211. Have you any knowledge of the reasons which decide the head Commission in altering the position of Sub-Commissions?—No, I have not.

8212. None. Is it frequently done?—Well, not so much lately; it has not been done in the last two or three years.

8213. But it was in the early days?—In the early days they were moved about a good deal.

8214. I do not speak so much of moving them about as of altering the composition of the Commission?—That is the same thing, taking men from me and sending them somewhere else.

8215. You are aware that Commissioner Fitzgerald has the power of altering it whenever he likes?—I believe Mr. Commissioner Fitzgerald is the head of that department.

8216. There is one other point I want to ask a question about: you mention a very interesting case in the county of Leitrim of a dispute as to whether a tenant was entitled to get a fair rent fixed on three acres of reclaimed bog which the landlord said he had no title to; is not that a frequent cause of dispute in your courts?—It is very frequent, particularly in Tyrone.

8217. That is to say, where tenants have in the course of years added to their holdings pieces of reclaimed bog which is not supposed to be included in the holding?—Yes.

8218. Have you met many cases of that kind?—I have met a great many cases. The ruling I make in that case, and the only ruling I can make, is this: if there is a dispute as to title, and I do not think the tenant has been sufficiently long in possession to give him a title, if the matter is not quite clear to me, I invariably send the case to the county court judge to try the title, and suspend the proceedings for six months.

8219. You do not know what is the practice of the other Sub-Commissioners in that case?—I think the other Sub-Commissioners follow the same practice.

8220. Would not that give a very strong power to the landlord to keep tenants out of court?—Yes, it is a very serious thing, taking away the reclamation; or taking away bog in that way.

8221. With reference to this one question of reclaimed bog and wild land the title to which is disputed: can you make any suggestion for the improvement of the law in this regard, for I should suppose that that is a common case?—Very common. I think that might very fairly be left to the chairman of the Sub-Commission to try the question of title, giving an appeal to the assizes.

8222. That is to say, to leave it to the discretion of the chairman of the Sub-Commission to say whether the tenant was equitably entitled to include that in his holding to give that protection?—Yes.

8223. Have you met many cases in which the turf was charged for after the rent had been fixed?—That I might have my suspicions about, but it has never come before me judicially.

Mr. *Macartney.*

8224. Where were these tenants whose period of redemption had lapsed, what county was it in?—In the counties of Roscommon, Leitrim, and Mayo principally.

8225. Mayo, Roscommon, and Leitrim?—Yes.

8226. Do I understand you to say that they were a very large proportion?—In the neighbourhood of Castlerea they are a large proportion.

8227. Those are cases that come before you?—Yes.

8228. Under what arrangements were they occupying the land when they thought they had the *locus standi*?—They had been evicted, and the eviction notice had been served upon them, and that, as you are aware, converted them into caretakers.

8229. But under what arrangements with regard to the rent did that transpire before you?—That did not come before me. The simple question that came before me was whether they were "present tenants"; the landlord threw down his eviction notice and proved it, and that was an end of it.

8230. So you can give the Committee no information as to their relations with regard to rent; can you give them any information as to how long they have been in this position?—I cannot; but one case occurred before me of a poor man who came into Castlerea, and he could not find out how much rent he owed. I adjourned the case over for one day in order that the agent might attend (he was at the assizes), and when the agent attended the next day he said that this man was under eviction. There was an end of it. The man followed me down to the railway station, and asked me whether I could get him any information as to how much rent he owed; he could not get it in the office; I said I could not. He was in a perfect state of destitution. I had to relieve him myself.

8231. In that case the destitution could not have come from his paying his rent?—Certainly not.

8232. In all these cases six months had elapsed since the notice was served?—Yes.

8233. Probably more?—Probably more.

8234. But you have no accurate recollection?—No; there were some cases in which the six months had not elapsed, and when I found that out and was in a position to explain that to the tenant, I always did so; I have said: "You have so many weeks or months to pay this rent; if you cannot pay the whole of it, perhaps they will take an instalment and let you back as tenant."

8235. In those cases you have not referred to, where the six months had not elapsed, would not they be able to come before the county court judge; is not there a section in the Act of 1887 which would enable a county court judge to stay the proceedings as long as they had any right?—The proceedings had not been stayed.

8236. I am not saying that they had; but would not they have had power to go before the county court judge?—Is that on the ejectment decree that you mean?

8237. After

Mr. *Macartney*—continued.

8237. After the notice attached?—It might have been two years or 18 months before they came into court.

8238. Before the ejectment decree; but even after the ejectment decree would not they have had power to go before the County Court judge?—They might go before the County Court judge, but I do not think the County Court judge could give them much relief after the decree.

8239. But he has the power to do so, has he not?—I am not sure that he has. He can stay a decree. I do not think there is such a power in the Act of 1887 after the notice has been served.

8240. Could you give me the date when this occurred?—Not the exact date.

8241. I mean to say, the month of the year, or the quarter of the year?—Yes; it must have been some time about Christmas last.

8242. Last Christmas?—Yes, about that time, or January.

8243. You were asked some questions about sub-letting; I want you to explain the phrase which you used about the landlord being "prejudiced." What is your view of the landlord being prejudiced or not prejudiced by sub-letting?—In the majority of cases of sub-letting that have come before me I never could find that the landlord was prejudiced.

8244. How do you mean "prejudiced"?—Prejudiced as to his security for his rent. It would be the other way, his security would be increased.

8245. Would that conclusion in your mind arise from the fact that the rents paid for the sub-lettings were considerably higher than the rent paid for the holding?—Very often there is no higher rent paid. The tenant of a holding who is paying 20*l.* a year, say, may perhaps sub-let a portion of his land with a house upon it for a rent of about 4*l.* or 5*l.* a year, that is all going towards paying the rent of the tenant, and I cannot see any disadvantage to the landlord in allowing that man to remain there.

8246. Is it your experience that the rents of the sub-lettings are higher than the rent of the holding?—No; much about the same.

8247. Would that apply to the county Antrim, that answer of yours?—No, Antrim would be an exception in that respect, because the houses are better in Antrim, and, as I have explained, a great many of those were let to hand-loom weavers and cottier tenants; the tenant would get a better rent there from the sub-tenant.

8248. The rent on the land attached would be considerable, would it not?—It would be perhaps a little more than what the tenant was paying himself.

8249. What do you mean by a "little more"? Would it be double?—Oh, no.

8250. Do you know of any case in County Antrim of that kind?—I am sure I could find cases where it has been double, but they would be very exceptional cases.

8251. Very exceptional cases?—Very exceptional cases where it was double the rent.

8252. Have you fixed any rents, we will say within a radius of six miles of Lisburn, between Lisburn and Malone?—Yes.

Mr. *Macartney*—continued.

8253. You know that is very thickly inhabited?—Yes.

8254. Have you ever examined or made any inquiry into rents paid by sub-tenants there?—No, the rents paid in that neighbourhood by the sub-tenants would be much higher than in the neighbourhood of Derry or Coleraine.

8255. I was confining my question to county Antrim?—They are in the very "Garden of Ulster" there, so far as tenants' rents are concerned.

8256. Do the tenants say that it is the "Garden of Ulster"?—No.

8257. Do you fix the rents, or have the rents been fixed on those lands from the point of view that it was the "Garden of Ulster"?—They are fixed according to the circumstances of each case.

8258. Is it the 18th section of the Act that deals with the lettings for labourers' cottages, which are not to be a restriction, or what do you call the cottier section?—That is the section.

8259. That section limited the sub-letting for labourers' cottages on a holding to a certain proportion; for example, where the holding contains not more than 25 acres of tillage land, the number of such lettings is not to exceed one?—Yes.

8260. That is the 18th section?—Yes.

8261. The Act of 1887, I think, abolished that restriction, and now, so far as labourers are needed for the cultivation of the holding, your discretion is absolutely unlimited?—Yes.

8262. So that looking at it from the point of view of the labourers required for the holding, is it your opinion that the position at present is satisfactory?—Well, I do not think it is.

8263. With regard to the labourers necessary for the cultivation of the holding, what further steps do you propose to take?—I would not take any further steps with regard to the labourers.

8264. That is the point I am on?—They are protected by the section.

8265. I want just for one moment to confine the question to the labourers. I want to know whether in your opinion legislation is sufficient; it is entirely in your discretion, I understand, now?—Yes; I think, so far as labourers occupying cottages are concerned, the tenant is sufficiently protected; but it is where they are not labourers that he is not protected.

8266. I want to take that separately; do I understand that it is your view that the restrictions on sub-letting to other than labourers required for the cultivation of a holding ought to be abolished?—Yes.

8267. So that a tenant should be at liberty to let houses and land to any applicant?—Yes.

8268. Whether employed on the farm or not?—Yes.

8269. Then is it your view that the Sub-Commission should be empowered to fix a rent on the portion sublet as between the sub-tenant and the tenant?—Yes, if the tenant comes into court.

8270. Have you had any experience under Section 19, which conferred the power on the court to impose conditions as to labourers' cottages where they determined a fair rent?—Yes, during the first two years of the administration

Mr. *Macartney*—continued.

of the Land Acts, we ordered labourers' cottages wherever we considered them necessary, but after the passing of the Labourers Act we found it was not necessary.

8271. But in those first two years you made those orders?—We did.

8272. Were they carried out?—They were, I think, in almost every case where we ordered them.

8273. Do you know that of your own knowledge?—When once a case passed from me I had no opportunity or means of knowing.

8274. Is there any power to enforce it under the Act as it stands?—I really do not know how it is enforced.

8275. You cannot tell the Committee what was the result of those orders?—I cannot, because it is now 11 or 12 years since I made such an order.

8276. But under the Act as it stands there is no power which would enable you or anybody else in Ireland to compel an order to be carried out?—I am not sure; there must be.

8277. It is pointed out to me that at page 272 of "Cherry" (Note "B") it is stated that a penalty of 1*l.* for every week during which the order is not complied with, after six months have elapsed from the date of the order, may be recovered in a summary way at Petty Sessions; and it is the duty of the sanitary authority of the district to enforce this penalty. That is under 45 & 46 Vict., chapter 60, section 4, and 46 & 47 Vict., chapter 60, section 11?—Yes; they can recover at Petty Sessions.

8278. The sanitary authority can?—Yes.

8279. There is no power in the Land Commission to enforce their own order?—I think not; I think it is the sanitary authority.

8280. There is no power given to the landlord?—No.

8281. And it is left to the sanitary authority?—Yes; it would appear to be so.

8282. Apparently the editors of this book, Cherry, Wakely, and Brady Murray, have not discovered any case where a sanitary authority have attempted to enforce an order so made. That is so, I think?—Apparently.

8283. Now I want to ask you a question on sub-division. First of all I will take the instance you gave, of two brothers who had, for a very considerable period, been engaged in practical farming, and carrying out the business of the farm; their father dies, and they come into court. I am assuming a case of course, I presume you assumed it; also where the rent was given to the representatives of the late tenant?—Yes, on a receipt.

8284. The father not having made a will, and having made no disposition of his property. Would it matter whether they had taken out administration or not?—Oh, yes; unless they had agreed, I should require them to take out administration.

8285. If they had taken out administration and come before you, would you then have fixed a rent for one or the other?—The administration would only be given to one, and they would be in the same difficulty.

8286. Would he then be entitled to have his rent fixed?—He could not get his rent fixed, because his brother would be in occupation of half the holding.

8287. Although he had taken out administration, so long as the rent receipt was given in the name of the representative, he could not get a rent fixed?—Certainly not. Besides, the other brother, in a case of that kind, would not consent. There are two consents to be got; there is the landlord's consent, and there is the consent of the tenants.

8288. Is it not your experience that it would be probably more difficult to get the other brother to consent than to get the landlord to consent?—Very often the other brother says: "I will not consent to the rent being fixed in my brother's name, because it gives him a control of the whole holding; but if you will fix it in the name of both, I will be satisfied." I say I cannot do that, and the landlord would not allow me to do it.

8289. But suppose the landlord did allow you to do it, it would still be in the power of the brother to have the rent fixed?—It would not prevent me then, because I would fix it in the name of both.

8290. Who would prevent you fixing it in the name of the brother?—The brother who would not consent. I would fix it in the name of the two. I am speaking of a case where the two brothers have been in occupation probably 15 years, going into the landlord's office, paying down 5*l.* each of their rent, 10*l.* on the counter, and getting the receipt in the name of the representatives. When these two men come into court the landlord says, "I cannot recognise two tenants of this holding," although he is taking the rent from the two, and giving a receipt in the name of one.

8291. While the father owned the tenancy?—Yes.

8292. They probably had been supporting their father, and putting a profit into their own pocket?—Very naturally I should say.

8293. Very naturally; I mean they may not have been handing their profits over to their father?—Not if he was in the grave.

8294. I understood you to put the case in which they worked the farm for 15 years when he was alive?—It is just an ordinary Ulster case.

8295. I am going to put another ordinary Ulster case in a moment; but is it in your experience that the better class of tenants in Tyrone, in Fermanagh, in Monaghan, and in all these northern counties, in the case you have given would ask for sub-division?—They would ask to have their rent fixed under the conditions in which they are placed.

8296. I am talking about the division of the rent and the dividing of the farms; would not they ask to have the farm divided?—I do not think they would come in and ask to have the farm divided if there was no difficulty in fixing the rent.

8297. I do not want anything about the rent, but only about dividing the farm?—Well, I do not quite understand your question.

8298. It is a very simple question; I put to you this: In your experience do you think the better

Mr. *Macartney*—continued.

better class of tenants in Tyrone, Fermanagh, and Monaghan, and counties of that description, would ask the landlord to divide their farms?—They would if they could not get their rent fixed in any other way, certainly.

8299. You think so?—I do.

8300. Now take a case which I think is commoner than the case you have given to the Committee, of the two brothers working for 15 years. We will say a case where two brothers are at home on the farm, another brother in business in Belfast, and, say, a couple of sisters who are either out in service or in some other employment; the father dies, he has made no will; they are all entitled equally to a share in the farm; would it not be rather a difficult business, if not absolutely unfair to the two sisters and the brother who were away from home, if you were empowered to deal peremptorily with this question of sub-division, and fix the rent in favour of the two who were working the farm at home?—I could not do that.

8301. You are in favour of doing away with this question of sub-division?—I am in such cases as you put to me. Where there are two persons in occupation, in the case you put to me, I would have to appoint a limited administrator under the powers given to the court by the Act, and fix a rent in the name of that limited administrator, and that would protect all the parties interested.

8302. Do you think that would result in the parties interested not getting as much out of the farm as they do under the present arrangement?—How "getting as much"?

8303. If you had an administrator, who is appointed for the protection of all their interests, do not you think it would be much more likely to result in family quarrels and litigation with regard to the share that each was getting?—That is what the law does now.

8304. No; there is no administrator?—Yes.

8305. Do you mean that there is an administrator in all these cases in Ulster?—The father dead, the mother in occupation, a son or two in such a case as you put to me, other members of the family away; I appoint the mother limited administrator for the purpose of fixing the rent.

8306. Have you power to appoint an administrator?—We have, limited only to that particular thing. The rent is fixed in the name of that person, and she (or he) is liable to all the other members of the family for the respective interests, whatever they may be. That is the course of proceeding.

Mr. *Macartney*—continued.

8307. In a case of that sort, do you think that arrangement satisfactory?—That is quite satisfactory.

8308. Therefore there is no necessity to come into sub-division there?—No; that would be dividing it into six or seven different holdings.

8309. Then do you limit your views of the sub-division of a holding to the case of a father and two sons?—I would limit it to dividing the farm into two, or probably three, if it were sufficiently large; I would not go into a general sub-division of farms at all.

8310. "Sufficiently large"; you would place some limit upon this?—I think that might be done.

8311. What limit would you fix?—I should say 20 acres of land, and a rent of about 10*l.*

8312. That would be the smallest sub-divided farm, 20 acres, that you would suggest?—Yes.

8313. So that your theory, or your views, of sub-division would not come into operation on any farm that was under 40 acres?—Any farm under 20 acres.

8314. I understood your smallest sub-division proportion was to be 20 acres?—No; 10 acres each out of the 20.

8315. Then your smallest would be 10 acres?—Yes.

8316. Do you think that in the agricultural future of Ireland that would be advisable?—I do; I do not see any objection to it.

8317. In dealing with improvements, I take it that the practice of your Sub-Commissions has been to give what they considered to be a full percentage on the outlay expended by the tenant on his improvements?—Yes, if there were improvements.

8318. Of course, if claimed and proved in court?—I mean if they added to the letting value of the holding.

8319. I am now excluding cases in which legal questions arise as to improvements in court, as to which I understand you immediately give a direction to your colleagues, such as "That improvement must not be taken," and "That improvement must be given," to exclude those cases. Do I understand that you give to the lay Sub-Commissioners absolute directions with regard to the way in which they should deal with the improvements when they come to look at them upon the land?—No, simply as to the legal principle upon which they should deal with them.

Monday, 9th July 1894.

MEMBERS PRESENT.

Mr. Brodrick.
Mr. Hayes Fisher.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. EDWARD GREER, again re-called in; and further Examined.

Mr. *Macartney.*

8320. I UNDERSTAND you desire to correct the answer you gave to Question 8319, which you think conveys a false impression?—The word "principle" conveys a false impression.

8321. Will you explain what you mean?—In court, as the evidence proceeds, I tell my colleagues what they are to give to the landlord, and what they are to give to the tenant. If the landlord claims the buildings, and he succeeds in establishing his title to the buildings, I say to my colleagues, "These buildings go to the landlord."

8322. That I quite understand. With regard to any improvements on which a legal question arises, you instruct your lay colleagues that they are to exclude them from their view, or to include them?—Quite so.

8323. Either one side or the other?—Either one side or the other.

8324. I quite understand that. With regard to the manner in which they deal with the other improvements which the tenant has claimed, and which he has successfully proved in court, do you give them any direction as to the manner in which they should make their allowance?—No.

8325. So that as far as your lay colleagues are concerned you have no reason to doubt that they do not follow the course that has been described to us by the other lay Commissioners who have given evidence?—I believe they follow the same course.

8326. To make it quite clear, one of the lay Commissioners who came before us rather differed in his view from some of the others; that is, he held that there was not only a percentage which could be given on the tenant's outlay on his improvements, but also that in many cases there was an increased letting value afterwards?—Well, I have never known it to be done.

8327. I only want to make it quite clear. That was Colonel Bayly's view; and he told us that in his case he gave the tenant both, but the other lay Commissioners who came here told us that in their view, when the full percentage had been given on the outlay on the tenant's improvements, in their opinion there was nothing to deal with afterwards; at all events you have never given any directions to your lay colleagues except as far as they were affected by some legal question in court?—Yes.

Mr. *Macartney*—continued.

8328. So that, so far as you are concerned, they went absolutely free and unfettered to use their discretion to the best of their ability?—Yes.

8329. There is only one other question just upon that point that I should like to ask you. You gave an answer to Question 8139 (I think it was in answer to Mr. Russell), in which you said you thought that in two-thirds of the cases a percentage on the outlay would eat up the whole increased letting value. Do you go on the farms yourself?—No, I have not been on a farm, I think, for the last 12 years, except, perhaps, in one or two odd cases.

8330. So that it would not be from any observation of your own that you formed that opinion?—Oh, no; none whatever. Perhaps I should state that I can form a very good opinion upon those matters in court because I invariably ask the valuer how much he has allowed for improvements, and I also ask him how much he has put upon a particular improvement. If it is an acre of reclamation I say, What have you valued that acre at. He may reply, I have valued it at 10*s.*; and I have allowed the tenant who reclaimed that acre 8*s.*, and I may get it in that way.

8331. That is only the valuer who may appeal for the tenant or for the landlord?—Quite so.

8332. I conclude that your Sub-Commissioners, like all other Sub-Commissioners who have appeared before us, form their judgment of the fair rent entirely independently?—Entirely.

8333. And although the result might approximate in the case of either one valuer or the other, they might arrive at the sum by totally different methods?—Yes.

8334. So that what a valuer allowed would be no guide in forming a judgment to you and your lay colleagues?—It would not.

8335. Your lay colleagues may have treated the matter in a totally different manner to that in which the valuer on each side has treated it?—Yes.

8336. Because the valuer would not be bound by

Mr. *Macartney*—continued.

by what you might consider your duty under the decisions of the Court of Appeal?—No.

8337. What is your view of a fee-farm grant as compared with a perpetuity lease; do you think both stand on very much the same footing?—They do stand on very much the same footing as far as the decisions go.

8338. I mean to say as to what they carry; a fee-farm grant is much more valuable, is it not, than a perpetuity lease?—I do not know that it is.

8339. It carries, I mean, the whole fee-simple of the ground?—Yes.

8340. A perpetuity lease makes a very considerable difference in certain districts, does it not?—I do not think it would really; not much.

8341. A fee-farm grant is practically, is it not, the purchase of the fee-simple by annual instalments, instead of by a payment down?—Yes; there is no practical difference in dealing with these cases.

3842. If it were mineral property there would be a very considerable difference, would there not?—There would.

8343. You gave us the case of McCrea *v.* Hamilton?—Yes.

8344. It appears, so far as I gathered from the figures you gave, that in that case the rent reserved on the fee-farm grant was less than the rent that had been paid before by about 46*l.*?—I think it was about 47*l.*

8345. And that the fine paid by the grantee under the agreement he made with the purchaser very nearly was accounted for by the difference in the rent?—The difference in the rent was exactly 47*l.* 17*s.* 11*d.* The amount of the fine was 1,560*l.* That at 5 per cent. would be 78*l.*

8346. Yes, at 5 per cent. it would be; but I suppose that in entering into that agreement the tenant probably thought he was doing something that was for his own interest?—I should say so. I do not think he would have done it if he had not thought so.

8347. With regard to the agreements out of court, you have told us that in many cases these agreements are constantly cropping up before you, and the evidence about them is that the tenants did not know what they were signing. Do you say that that would apply generally to the agreements that have been made out of court?—In a great many cases it would.

8348. What do you mean by "a great many cases;" do you mean to say that 75 per cent. of the 121,000 tenants who have signed agreements out of court during these years have done that without knowing what they were about?—In a great many of the cases they did not know that they were entering into an agreement that would bind them for 15 years.

8349. What do you mean by "a great" number "of cases"?—I suppose certainly a third of the cases.

8350. You say "certainly a third of the cases"; that is 40,000 cases?—Oh no, no; I am not speaking of the 40,000 cases; I am speaking of the cases that came before me.

8351. Oh, the cases that came before you?—Yes; I could not say anything about the other cases.

Mr. *Macartney*—continued.

8352. Is that on a statement made to you by the tenants?—Yes.

8353. Did you test that statement in any way before you came to your conclusion, or is it merely on the *ex-parte* statement of the tenant that you formed that conclusion?—It is on the statement of the tenant alone; he was in court. I had no one else before me, and, of course, I had no one but the tenant to give me evidence upon that.

8354. Then I may take it that your opinion has been formed upon the statement of the tenant which has not been tested?—Yes.

Mr. *Sexton.*

8355. Was it a statement on oath?—A statement on oath, yes.

Mr. *Macartney.*

8356. Of course your practice in court would give you no experience as to how these agreements were generally arrived at between landlord and tenants; have you any experience outside the court?—I have no experience that would be of any use to you.

8357. To the Committee I mean?—Any experience I have is mere rumour. I have no experience outside the court. I do not listen to anything outside the court about the Land Commission; I make a rule not to do so.

8358. I take it your opinion, as you have just frankly told us, on this point is simply formed from a statement of the tenant which you have had no opportunity of testing, and, in fact, have not tested in any way whatever?—Quite so.

8359. Now you have told us that a great many of those agreements were made while the Donoughmore Committee was sitting?—A great many of those agreements were while the Donoughmore Committee was sitting.

8360. In answer to Question 8131 you told us: "A great many of these agreements were made while the Donoughmore Committee was sitting in the early years of the administration of the Land Act"; and you told us in the next answer but one that the "tenants in Ulster got alarmed; they thought the Act was going to be repealed, and they rushed and settled in many cases"?—Yes.

8361. Do you form that upon a study of the table of the cases that have been arranged out of court; the agreements that have been come to out of court?—No, I formed that opinion at the time; there were so many cases being settled; an immense number of cases were being settled.

8362. There was an immense number of cases settled by the Commission at the same time too, in the early years?—The way it arose before me was this: I would get a list probably of 300 or 400 cases, and I would find sometimes that half of these were settled out of court.

8363. And you concluded that this was the result of the Donoughmore Committee?—I heard it from professional men and others that they were settling.

8364. Professional men, I take it, do not like settlements out of court?—It depends upon

Mr. *Macartney*—continued.

whether they have got their fee or not; if they have got their fee they do not object.

8365. If they were never employed would they like those settlements?—If they were never employed it would not affect them.

8366. I think we may take it, without any prejudice to them, that they do not like settlements out of court?—Yes.

Mr. *Sexton.*

8367. I suppose they would prefer settlements out of court, with a solicitor, to hearing in court without one?—I suppose they would.

Mr. *Macartney.*

8368. I quite admit that there were a great many rents settled by agreements out of court. Is it not a fact that in those very early years there were also a large number settled in the Commission; was not there a great rush both in and out of court?—I suppose so: There was very little business for the first two or three months, then they rushed in; at least that is my recollection of it.

8369. The first month there were only four cases, but they rapidly developed in the next three or four months?—Yes; in the next six months they came in in numbers.

8370. For instance, in the first year there were over 15,000 cases settled judicially in court?—Yes.

8371. And there were about the same number settled out of court, 16,000?—Yes; I would expect so.

8372. Then at what period of the Donoughmore Committee was the greatest effect produced upon the tenants in Ireland; I am speaking of the whole year, say from October 1881 to October 1882; that is the period I speak of?—I thought the Committee sat in February, 1882, and they sat during the whole of 1882.

8373. But at what time did they produce the greatest effect?—I am speaking now of the period from October 1881 to October 1882; that is a period in which, I believe, a great many settlements were made, 1881 to 1882, or the beginning of 1883.

8374. You think that was a time when the Donoughmore Committee had the greatest possible effect upon them?—I do; about that time.

8375. I see by the Report of the Land Commission of August 1882 there were 12,475 agreements fixed out of court?—Yes.

8376. Apparently the Donoughmore Committee, which had not then reported, and had not long begun to sit, began to lose its effect upon tenants, because I see in September of that year 1,769 were fixed by agreement out of court, and in October the number had fallen to 1,361?—Yes.

8377. Do you think the effect of the Donoughmore Committee had ceased by the end of 1882?—I think it had. I think it was while the evidence was going on.

8378. Yes, it was while the evidence was going on. Then to what cause would you attribute the fact that by August 1883, 36,000 cases had been fixed out of court; the Donoughmore Committee having ceased to have any effect by the end of 1882, what other cause would account for the great rush in the following twelve months to fix rents by agreement out of court?—I really could not say.

8379. My suggestion is that when you study the figures it is clearly impossible to form any other general conclusion than this: that in the years in which there were a great number of tenants having their rents fixed in court there were also a great number of tenants who had their rents fixed out of court; for instance, I do not know whether you have studied the figures of the agreements out of court for the last four years; in 1887 they had fallen to 2,596; in 1888 they rose to 5,763; in 1889 they nearly doubled, 9,772; then they fell again in 1890 to 5,506, and in 1891 to 4,040?—Yes, they have fluctuated very much.

8380. There was nothing in the shape of the Donoughmore Committee sitting then?—No.

8381. Do I take it from you then that the only impelling motive to the tenants to settle their rents by agreement out of court was the Donoughmore Committee?—No, not the only impelling motive; there were other motives.

8382. May I ask you if the conclusion you have arrived at with regard to the Donoughmore Committee's influence upon tenants is based upon the same sort of evidence as the conclusion that you gave us with regard to tenants not knowing what they did when they signed their agreements?—No; I have heard the tenants swear that they did not know what they were signing.

8383. I know that; but who gave you this information about the Donoughmore Committee?—Well, it was general rumour all over Ulster, where I was acting at the time.

8384. Did you read it carefully yourself?—The evidence?

8385. The evidence?—I read it most carefully, for I was very frequently attacked in it.

8386. It has not done you much harm apparently?—I hope not.

8387. I hope it did not influence your decisions?—Not the slightest.

8388. Then it never did you much harm?—Matters were attributed to me that I thought very unfair.

Mr. *Sexton.*

8389. You had certain statements made to you verified by the oath of the tenants?—Yes.

8390. Upon which Mr. Macartney appears to cast some doubt?—Yes.

8391. Have you any doubt that the oath of a tenant is just as good as the oath of a landlord?—I do not think there is any difference.

Mr. *Macartney.*

8392. How did they come to swear this before you?—Well, sometimes the agreement was thrown down, and I said: "You cannot go any further now, you have signed this agreement."

8393. That

Mr. *Macartney*—continued.

8393. That would be done at the very start, would it not?—Yes.

8394. Before they are sworn?—No, the first thing is to swear the tenant; and I assure you I do not take any of these statements in court except on oath.

8395. And you attach great value to them?—I really do attach value to the oath of a witness, unless I find in his manner, or from some collateral circumstance, that he is not telling me the truth; and if I find that I deal very summarily with him.

8396. What I want to know is how you came to receive this evidence if the agreement was produced by the landlord, and I take it it was produced by the landlord; how is it the tenant gave any evidence at all?—The tenant would go into the box, he would be sworn, he would commence to state his case, the landlord's solicitor would say: "You need not go any further with this, I have an agreement here signed by the tenant on such and such a day;" I would say: "Very well, produce your agreement." If that agreement is produced, and it is recorded, there is an end of the case; I dismiss that application with costs if the agreement is recorded; the tenant had no business to come there; but if the agreement was not recorded (a great many were not recorded, or not recorded in time), then the only effect that agreement would have upon the court would be this: "You are not bound by this agreement; your status here to get a fair rent is not affected by the agreement, but the agreement is an element we will take into consideration as showing that you agreed to a certain rent at such a date, and consider whether it is not a fair rent." That is how it arose.

Mr. *Sexton*.

8397. Now, I hope it is made clear to Mr. Macartney that the effects produced upon your mind in regard to this matter were effects produced upon oath before you?—Yes.

8398. Supplemented by cross-examination, and by yourself, if you wished to sift it?—Certainly.

8399. The suggestion has been repeated as to the tenant's oath. You have now had judicial experience for 13 years?—Yes.

8400. Does your experience suggest to you that the oath of the tenant is open to any doubt?—I do not think the tenants of Ireland are untruthful witnesses.

8401. They are not untruthful, you think?—No.

8402. I wish to ask you a few questions upon what I may term the internal economy of the Sub-Commission. I understand that a Sub-Commissioner (legal or lay) may be removed at any time from his district?—Yes, he may.

8403. If the legal Sub-Commissioner is removed he is necessarily removed, I suppose, to discharge legal functions elsewhere?—Yes.

8404. And of course a lay Sub-Commissioner, to discharge lay functions; is this done at set periods or according to any visible system?—Well, I really cannot answer that question. I could not say whether there is any system or not,

Mr. *Sexton*—continued.

but it is done very often at fixed periods; it is done, for instance, after a vacation; a new district may be assigned after Easter, or a new district may be assigned after Christmas, or after Midsummer.

8405. Has it happened that a Sub-Commissioner might be removed perhaps when his Commission were half through an estate?—Oh, no.

8406. You have never known that?—I have never known that; they always leave the legal Sub-Commissioner to finish up all his work.

8407. The "legal" Commissioner?—Yes.

8408. But the lay Sub-Commissioner?—I have scarcely known a lay Sub-Commissioner, except on some emergency, taken away in the middle of an estate.

8409. We have heard of a district, and of the work being incomplete when a lay Sub-Commissioner was removed to another district?—Yes.

8410. That might happen under the present system?—Yes, but I do not think it has happened very often.

8411. Has it happened at all?—I cannot recollect.

8412. If that happened and a new man was brought in the effect might be to produce a lack of uniformity in the decisions, might it not?—Oh, yes, and he would have to go over the other man's work.

8413. And that would probably create dissatisfaction, I suppose?—Yes.

8414. Do you think it would be advisable, in order to avoid the appearance of arbitrary removals, that there should be a rota, so that if there were to be removals the man next on the rota might be sent?—I think it would be very desirable; and I think it would be very desirable to confine lay Commissioners to their own districts and not move them about. I think, for instance, that Ulster men should not be sent to the West or South of Ireland; I think they are much better qualified for dealing with cases in the north; they know the customs, they know the habits of the people; they know the markets, they know the fairs, they know the taxation, and all those questions and elements that they require to consider.

Mr. *T. W. Russell*.

8415. It is equally true that they know comparatively little about the pasture lands of the south, is it not. The Ulster farmer will know comparatively little about the pasture lands of the south?—Very little indeed; and I find that the southern farmer knows much less about the tillage lands in the north.

8416. That is what I mean; it re-acts both ways?—Yes.

Mr. *Sexton*.

8417. Ulster is distinguished from other provinces, first by its custom, and secondly by the greater prevalence of tillage?—Certainly.

8418. A man may be a very good judge of holdings in the south, and no judge at all of holdings in the north?—Quite so.

Mr. *Sexton*—continued.

8419. And conversely. Will I suggest the rota, so that at least when a man is removed it could be seen that he is removed by virtue of the rota and not by any arbitrary choice?—I think it would be very desirable.

8420. Now in regard to the relations between the legal Sub-Commissioners and the Commissioners in Dublin; I understand that the legal Sub-Commissioners are liable to be removed from one district to another; in fact, I believe you were removed?—I was originally appointed for Ulster, and when I accepted my appointment from Mr. Forster I was told that I would not be taken out of Ulster, for I stated to him that I really had no knowledge of Ireland outside of Ulster.

8421. Well, you were taken out of Ulster, with which you were well acquainted, and put into Connaught, of which you knew comparatively little?—I was first sent to Connaught by the late Mr. Litton, who asked me to go there to relieve the great congestion of cases in the County of Mayo, and I disposed of those cases during one summer; I have since been occupied mainly, I may say, in Connaught; I have four or five counties in Ulster, but the remainder are in Connaught.

8422. Your rulings in regard to law are adopted by your court?—Yes.

8423. Then when an appeal is taken from you upon a question of law, it goes before a Commissioner who has power to remove you at his pleasure to any other district?—The only Commissioner who has control over me as a Commissioner is the judicial Commissioner.

8424. Exactly; he is a judicial Commissioner who determines appeals from you upon questions of law?—Yes; he and Mr. Commissioner Fitzgerald.

8425. Is it not rather a peculiar relation between two judicial persons, the law of one of whom comes on appeal to the other, that the second of these should have the power to move the first about the country?—The judicial Commissioner has power to send me wherever he wishes, to any part of Ireland.

8426. Do you know that kind of relation in any other court or hierarchy of officials between the judicial person who first declares the law and the judicial person who declares it upon appeal from him?—I cannot call to mind any analogous position.

8427. Perhaps the principle of a rota might be applied also usefully to the legal Sub-Commissioners, so that if there was to be a removal at all it should be in a set order?—Yes.

8428. You have to lay down law in your court?—Yes.

8429. What facility is afforded to you for ascertaining the law in its development according to the decision of the Land Commission and of the Court of Appeal?—Well, we labour under a very great disadvantage there; we have no reported decisions.

8430. You have no reported decisions?—No [illegible]orted decisions of the Land Commission.

[illegible]epo[illegible]l. None at all?—Not specially reported; 8431. [illegible] some cases in the "Irish Law Times" we find [illegible]citors' Journal," and of course the more and "Soli[illegible]

Mr. *Sexton*—continued.

important cases that go to the Court of Appeal we can find in the "Irish Law Reports" (some of them only); but the ordinary cases that are tried before the Land Commission on appeal we get through the newspapers, principally the "Freeman's Journal," and the Belfast papers when the Commission sit in Belfast.

8432. How long after the decisions in the Court of Appeal might you have the judgment available?—That is a reported judgment?

8433. Yes?—Do you mean in the High Court of Appeal?

8434. When I speak of the Court of Appeal I mean the Judges' Court, not the Commission?—It is generally three or four months, sometimes six months.

8435. Meanwhile you may have been going on cheerfully under the old law, as you think?—Quite so.

8436. You have to find these reports for yourselves, they are not supplied to you?—We have to find them, cut them out of the paper and keep them.

8437. Hunt the newspapers for them sometimes, I suppose?—Yes.

8438. I suppose you are always more or less under the uneasy feeling that there are unreported cases which may be of importance?—A very uneasy feeling often. We had, I think, for the first twelve months specially reported cases published, published every month, but they were not published by the Land Commission or under the authority of the Land Commission.

8439. Do not you think that is a very free and easy way of dealing with the law which concerns the whole of the income of the people of the country?—I do indeed.

8440. Is there any other law practically so important to the people of Ireland?—I do not think there is.

8441. Do not you think provision ought to be made to afford an authorised report of the decisions, both of the Court of Appeal and the Land Commission, and to supply them to the inferior judges?—Certainly of the Land Commission, for our guidance.

8442. Are the other reports sufficient?—The other reports are to be found in the "Irish Law Reports" of the important cases.

8443. I take it that it is not enough really to know the decision, especially in the case of the judges, or even in the case of the Commissioner below, who ought to have a full report of what he said?—It would be very desirable.

8444. Because it occurs to me in reading several of them that the decision in regard to an individual tenant may be but trifling compared to the effects of something said in the judgment; for instance, in the case of Adams *v.* Dunseath the effect of it was that 2*l.* a year was added, I believe, to the rent of the tenant, but the effect of the judgment taken as a whole was to give a direction and meaning to the whole of the Land Commission Code?—Yes.

8445. It is of extreme importance then that the observations of the judges, including the *dicta* by which they may really overturn the effect of a particular judgment, should be communicated to the inferior courts?—Oh, certainly.

8446. In

Mr. *Sexton*—continued.

8446. In your long experience have you had many dissents between the Sub-Commissioners?—Very few.

8447. Are they sometimes material?—Comparatively few.

8448. Comparatively few as compared with the whole number of cases?—Yes.

8449. But substantial, I suppose, not trivial?—Oh, no, they never dissent trivially; if there is a trivial difference, they scarcely ever dissent.

8450. But there are sometimes material dissents?—Yes; and they are entitled to record their dissents. They can write their dissent across the Minute on the file.

8451. "Entitled," but are they bound?—No, they are not bound; but if one of my colleagues agrees with me, and the other differs, he can record his dissent on the file.

8452. It seems to be more important that he should be "bound" than that he should be "entitled"; because what the public want is not the satisfaction of the Sub-Commissioner, but of the litigant?—Yes.

8453. It used to be the practice, I think, for a dissenting Sub-Commissioner to state his view from the bench?—Well, I have had very few cases of that kind. I had one Commissioenr with me that delivered judgments of his own very frequently.

8454. Do you think it would be convenient at least that a dissenting Sub-Commissioner should enable the litigants to know what his view was, should be bound, in fact, to record upon some paper, available to the litigant, his opinion upon a fair rent?—I think it would be very desirable; as I have said before, I think the public and parties interested should have every information that it is possible to afford to them.

8455. I submit to you that the essential points are these: first, the full letting value of the holding; if you value the land apart from buildings, or if you value the land and buildings together, the full letting value with the value of the buildings distinguished?—Yes.

8456. They might be the tenant's mostly?—Yes.

8457. The annual value allowed in respect of them aud the fair rent?—Quite so.

8458. Do you see any reason why these particulars should not be available to all the parties in every case?—I do not.

8459. We have been told generally, with regard to this land code, by Lord Justice FitzGibbon that it has been hedged round with particular difficulty, because of two circumstances, first the incorporation of many statutes with each other under which the judge says, "If you read a clause in any Act you must keep every clause in every other Act in your mind at the same time," would you suggest that when an opportunity offers the Land Law of Ireland ought to be simplified, if possible, into one Act?—I think it would be very desirable to consolidate all the statutes from 1860 down to the present time in one short code.

8460. And also to modify as far as possible the highly artificial system of definition that prevails in the present Acts?—Certainly; I really do not see any necessity for it; I think

Mr. *Sexton*—continued.

the plainer the Land Law of Ireland is made the better for all parties.

8461. And of course a law that deals with the lives and incomes of the people so fundamentally as this ought to be understanded of the people if possible; I suppose you would agree that for a layman to attempt to understand this code is practically impossible; even lawyers do not always succeed, I think?—I think it would be a very knotty subject for any layman to attempt.

8462. And even some lawyers, I think, find it as much as they can do?—Well, I have found it as much as I can do.

8463. Now, about the case of Adams *v.* Dunseath, I understand you to say that you decided that as an Ulster custom case?—I did.

8464. And that the Court of Appeal in Dublin decided it as a non-Ulster custom case?—They decided it as a non-Ulster custom case.

Mr. *T. W. Russell.*

8465. There is one point which arises out of my examination: I asked why the Court of Appeal had acted in that way, and someone at the table said that I might ask the solicitor of the tenant who acted for the tenant before the Land Commission. Did not Mr. Justice O'Hagan and Mr. Litton absolutely state the case and draw the five questions that were submitted to the Court of Appeal?—I believe they did; you are right in that.

8466. Therefore that would put the onus back upon the Land Commission, and not upon the tenant's solicitor?—It would.

Mr. *Sexton.*

8467. The Land Commission certainly drew the questions?—They did.

8468. Did you send up any document from your court to the Land Commission?—None whatever, except the ordinary order.

8469. The file?—The file.

8470. Did the file disclose any circumstance as to whether the holding was subject to the Ulster custom, or was it silent?—No, it never does.

8471. It never does?—No.

8472. Are you aware that Chief Baron Palles, who is still a member of the court, declared in the course of the judgment that the holding was not subject to the Ulster custom?—Was not?

8473. Yes?—I do not think he actually said that.

8474. I read it this morning. He said it parenthetically, but he said it very plainly, all the same, that the holding was not subject to the Ulster custom. On the other hand, Lord Justice FitzGibbon said (he used very guarded language, as he usually does) that it did not appear in the case?—I think he said that it neither appeared in the case nor was stated at the bar that it was an Ulster tenant-right holding: and I think he went on to say, as well as I recollect (I have not the report of the case here), that he would not say what his decision would have been if it had been presented to the court as an Ulster tenant-right case.

Mr. *Sexton*—continued.

8474*. He suggested that it would make no difference?—Did he?

8475. He did. Can you follow that suggestion?—No.

8476. You are unable to realise what it means?—Yes.

8477. It was very unfortunate, was it not, that the title of the whole proceeding to a custom case should have been presented in such a way as to lead the court to think it was not an Ulster custom case?—It was very unfortunate.

8478. When you say you do not apply the edict of Adams *v.* Dunseath in custom cases of course you do not allude to the whole scope of the judgment?—No, I allude to it only with reference to the improvements.

8479. That is to say, you do not apply to the Ulster custom tenant the limitations contained in Sections 4 and 5 of the Act of 1870?—Yes.

8480. Otherwise Adams *v.* Dunseath declared what has since been the general law?—Yes.

8481. Now I should like to ask you one or two questions about the principle upon which these Acts have been interpreted. You know that in the Act of 1881 the Legislature declared in plain terms, in Sub-Section 9 of Section 8, that no rent should be allowed or made payable in respect of any improvements made by the tenant or his predecessors in title for which he had not been paid. That was very plain language, was it not?—It appears to me to be plain.

8482. Then Section 57 said that "any words or expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act." The Act of 1870 was an Act, was it not, to secure to the tenant upon quitting his holding a sum of money from the landlord in respect to improvements?—Yes, to secure to the tenant a certain sum according to a specified scale in the Act of Parliament on his being disturbed or put out of possession.

8483. One sum of the landlord's money to be paid to the tenant on the tenant quitting the holding?—Quite so.

8484. That Act failed to achieve its purpose in Ireland?—It did.

8485. And in consequence of that failure the Act of 1881 was passed, and applied a new remedy?—I believe so.

8486. The old one having failed?—Yes.

8487. The new remedy was that instead of claiming a sum on quitting the tenant might sell his tenancy?—Yes.

8488. And that whilst in the holding he was to be entitled from year to year to an allowance off the rent which he would otherwise pay, because of the improvements he had made?—Yes.

8489. Therefore the Act of 1881 was an Act practically to supersede the Act of 1870?—Yes, in that respect.

8490. To replace it with what the Act deemed an adequate remedy?—Yes. The Act of 1881 was essentially a remedial statute.

8491. To apply a new remedy?—A new remedy.

Mr. *Sexton*—continued.

8492. But the judges, looking at the two Acts the first of which had failed, and had been succeeded by the other applying the new remedy, saw nothing repugnant in the Act of 1881 applying to the case of the tenant having a fair rent fixed, all the restrictions and limitations which were to apply in the case of the landlord paying him one sum at the time of his quitting the holding?—Yes.

8493. The conditions inserted in the Act of 1870 for the advantage of the landlord, to lower the amount of the one sum he was to pay when the tenant was quitting, were all applied by Adams *v.* Dunseath to the disadvantage of the tenant in the case of the annual sum he was to get from the landlord?—Yes.

8494. That is the way the thing has been done?—Yes.

8495. And by the same system of interpretation, the word "improvement" being defined as a "work" in the Act of 1870, that definition has carried with it the consequence of limiting the advantage which the tenant might receive from year to year in respect of any improvement by the sum which he might have received under the Act of 1870 if he was to quit his holding?—Yes, just the actual cost.

8496. That limits the capital interest?—Yes.

8947. Therefore, so far as these interpretations are concerned, there is nothing to show that the judges regarded the Act of 1881 as an Act passed in consequence of the failure of the former Act, or an Act instituting a new remedy entitled to be tried upon its own merits?—No.

8498. Now upon true value I draw your attention to the fact that the Legislature in directing you to fix true value at the instance of the landlord, when the tenant was quitting the holding, first suggests that there should be agreement between landlord and tenant about it; do you remember that?—Yes; or that there must be a disagreement before we can fix it.

8499. Now does it occur to you that if the Legislature intended to do what Mr. Doyle does, to give the landlord for five years' purchase what the tenant could sell for 25 years' purchase; if they intended that would they ever have said: "The landlord may purchase the tenancy for such sums as may be agreed upon, or" then, "in the event of disagreement, may be ascertained by the court to be the true value thereof." Do you think the Legislature really meant to enact that the tenant is to sell his tenancy at such a fraction as Mr. Doyle thinks the true value?—I cannot believe they did.

8500. You are one of the official interpreters of these Acts; does that convey to you that the price which the tenant was to agree upon was a price approximating to the price he would get in the market; otherwise was he likely to "agree"?—Certainly; a price approximately the price he can get on the market for the land. The first part of the section is, that the tenant "may sell his tenancy for the best price that can be got for the same"; I cannot read it any other way.

8501. Surely; is a man, with those other words staring him in the face a dozen lines above, likely

to

Mr. *Sexton*—continued.

to agree to give the landlord the thing for substantially less than he can get for it in the market?—I do not think so.

8502. I submit to you that the intention of the Legislature there is clear; that the true value is to approximate to the market value?—Certainly, to give the true value.

8503. On what; "in the event of disagreement may be ascertained by the court to be the true value thereof"?—Yes, "the true value thereof."

8504. Now we have been told here, by Sub-Commissioners, that it is very hard to know upon what principle any value is fixed unless there are improvements; there is no word there about "improvements" is there?—No.

8505. It is the "tenancy"; there may be no improvements; why should the difficulty occur in fixing the value?—I do not think there is much difficulty under that section in fixing a value. I have never found any difficulty in fixing a true value. What I have done under that section is this: where a tenant serves his notice upon his landlord of his intention to sell the tenancy, and asks a certain price for it, and the landlord serves back his notice saying he will not give that price but will give you so much, there arises a "disagreement"; there must be a disagreement where he gives him notice of his intention to purchase.

8506. What I have suggested to you is that the use by the Legislature of the word "agreement" indicates that the Legislature intended the true value to approximate to the market price?—I am sure they did, because it would be absurd to expect that he would "agree" if they did not come very near the market price of what was to be done.

8507. Now do you see any reason at all (ethical or economical) why the tenant should be obliged to sell this legal property to anyone at less than its market value?—I do not.

8508. What harm does it do, in the least, to the landlord or to anyone that the landlord sells to?—It does not do any harm to the landlord in Ulster at all, because the landlord in Ulster is almost sure to get as much, and probably more, than he has paid for the holding to the outgoing tenant.

8509. But if this system is going on, and the landlord is to be allowed to purchase at a fancy low price, may he not the next day obtain the full market price from an incoming tenant?—Certainly.

8510. Even for a present tenant?—Certainly.

8511. In two years more, in 1896, he can let that farm to a future tenant?—Yes.

8512. Take the market value and fix what rent he pleases?—He can.

8513. Is that a tolerable system?—There is nothing to prevent him doing that.

8514. Do not you think that that ought to be stopped as soon as possible. Do not you think that part of the Act badly requires to be amended?—Well, under that section, you know, the landlord is bound to pay him the full market value if we declare it. Perhaps you are now speaking of specified value?

8515. No, indeed I am not; I do not think it

Mr. *Sexton*—continued.

matters very much, because specified value apparently in practice is ruled by true value, and if the landlord at the time of fixing a fair rent calls upon you to fix a specified value, we are informed that you do that upon the same principle as if upon the occasion of the sale of a tenancy you were fixing a true value, and apparently they are the same. Now, if the practice be transfer to and enable the landlord to appropriate that legal property of the tenant at any price materially less than he could get in the market, do you think that system ought to continue?—I do not think so; I think he should not be obliged to take any price less than he could get; I think the tenant should be entitled to get the full competitive price he could get in the market.

8516. Otherwise there is undoubtedly confiscation of his property?—Clearly.

8517. His legal property, moreover?—Yes.

8518. Now about the suitability of improvements: I wish to ask you a question concerning a case which I think you tried, the case of John Robb against the Trustees of the Marquis of Downshire. It was brought before the Land Commission, and in the judgment of the Land Commission appears this sentence: "It appearing to the court that certain works have been executed on the holding of the subject of these proceedings by the tenant or his predecessor in title which add to the letting value of the holding, but are not suitable to it as an agricultural or pastoral holding; it is declared that the tenant is not entitled to be exempted from rent in respect of such works, and that the value of the same should be taken into account in fixing the fair rent of the holding, and the court doth accordingly order that the order of the Sub-Commission" shall be modified. Now will you kindly enable the Committee, briefly as you can, to apprehend what happened in that case?—In Downshire and Robb the application came before the court on the part of a tenant (Mr. Robb), who was a merchant carrying on a large business in Belfast; he had purchased this holding within a few miles of Belfast, and he had improved the buildings upon it very considerably, the residence and his office houses. When the case came before me (at, I think, Lisburn) I directed my colleagues that any buildings they found upon the holding that were in excess of what were required for the working of the holding were the landlords, and according to the decisions they would have to put rent upon those buildings. The old rent was 145*l.*; they reduced it (two very competent Commissioners, Mr. Garland and Mr. Chambers, who is since dead) to 120*l.*, and I said that I could not agree with them, that I considered the old rent of 145*l.* should be confirmed. I had in my mind the value of the buildings added to their rent.

8519. You felt the law compelled you to regard the buildings as unsuitable?—Yes, the decisions bound me ——

8520. Because they were too good?—Because they were too good.

8521. Your ordinary practice, as I understand, is to value the lands without the buildings if the

Mr. *Sexton*—continued.

buildings are the tenant's?—If the buildings are the tenant's.

8522. According to that ordinary practice the tenant ought to get free, and nominally does get free, of rent upon the buildings?—Yes, where they are suitable.

8523. Where the buildings are too good; where the tenant has expended too much money upon them, looking to the value of the holding, you then decline to leave them out of view. What harm would it do the landlord if they were left out?—I do not think it would do the landlord any harm if they were left out. I am not now discussing the principle of the thing; I tell you the principle on which I felt I was bound to decide the case and the authorities. I do not see why the landlord should get rent upon those buildings if the tenant made them. I think a fair and equitable thing would be to leave them to the tenant and not put any rent upon them.

8524. This appears to be the sum of the wisdom of the law upon the subject. If the tenant puts up a bad house that is excluded from rent, he gets the full value of it; if he puts up a good house it goes into rent, the landlord gets it and not the tenant?—If the lay Commissioners consider it is too good for the holding. Take a farm of 10 acres of land, the Commissioners go upon that farm and find a house worth 1,000*l.* on it; this house is quite unsuited to the farm of 10 acres, the man has chosen to go and spend so much money upon it.

8525. In other words, if he spent 200*l.* on the house as capital, the annual value of it would be saved to him?—It would.

8526. If he spent 500*l.*, say, on the house, he would pay rent on the full value of the 500*l.* every year, and he would lose the whole 500*l.* as well?—We would allow him, perhaps, 200*l.*, or what was suitable.

8527. He would lose the balance?—He would lose the balance.

8528. Is that a workable thing?—I do not think it is; I cannot see any reason for it.

8529. You think that might be amended?—Yes; that is under the section of the Act of Parliament which says that the buildings are to be only suitable for the holding.

8530. I think it has been argued?—It has, and has been very much debated.

8531. I think it has been argued whether the Legislature ever intended, in saying that a work suitable to the holding should be made, that if the house is a little better than is necessary for the holding, the tenant ought to be fined the rent and the capital in consequence?—I have never done it when the house has been "a little better," because I think it is very desirable to encourage tenants to put up a good house and to live in a good house; but not extra good houses, such as Mr. Robb's. I think you will find that Judge Bewley confirmed that decision of mine.

8532. You will not be surprised to hear that Members of the House of Commons are very often surprised at the aspect of their own intentions as interpreted in Ireland?—No.

8533. Now as to the method of proving improvements; I understand that in Ulster you assume that the buildings on the holding belong to the tenant?—Yes.

8534. And you call upon him to prove everything else?—Yes, everything else that is not visible.

8535. That is not visible; what you mean then merely is, that you call upon him to satisfy you that it exists?—Yes; we must know who made it and when it was made.

8536. Now I really should like to get some very clear light upon that; if the law is clear upon anything it is clear in regard to the position of the Ulster tenant's improvements; he is out of the limitations contained in Sections 4 and 5 of the Act of 1870. The law declares, as I understand it, that the presumption is that he made the improvements until the contrary is proved, that the onus lies upon the other side to prove that he did not; now how comes it out of such a state of law that there has come a practice which calls upon the tenant to prove everything except houses?—If the man has drained five acres of land he must tell us he has drained that five acres of land.

8537. If you find it is there why do you want to know that he made it?—We do not know.

8538. Suppose he swears it is there?—Suppose he swears it is there, then I ask him, "How do you know it is there, did you do it?" That is the way it arises. He says very likely, "No, I did not, and did not see it done." Then I say, "How do you know it is there?" He says, "Well, my predecessor did it. I bought the farm and paid him for the drainage." I say, "That is very well, but that is not legal proof."

8539. That is not legal proof that it is there?—Yes. My suggestion, as I gave it you on Friday with regard to that, is this: that if a man makes a statement (swears to it in court) that he either reclaimed five acres of land or that he drained five acres of land, I think it should be sufficient to shift the onus on the landlord, then to show that he contributed towards that drainage or did it himself, always provided that when the lay Commissioners go upon the land they find it to exist, they get him to open the drains and open the outlets, and from the appearance of the land they find it is really drained.

8540. What I should suppose in any common-sense administration of the system would be that if the tenant claimed improvements on his orginating notice, and if upon going to the farm you found them there, whether under his direction or otherwise, that ought to be sufficient. If they are there what more can they be than that they are there; what can proof add to that fact where a tenant is proved to be the owner. What I would submit to you is, first in the case of the Ulster tenant, that as the law declares the improvements are his until the contrary is proved, it shall be a rule of law that any improvements found upon the holding existing and adding to the letting value, should be counted to the advantage of the tenant in fixing the rent?—I think it is desirable that should be so, but, according to practice, it is not so.

8541. How has this practice been read out of the

Mr. *Sexton*—continued.

the law; is it by direction of the Land Commission?—Oh, no; we have not had any direction from the Land Commission; we are left quite unfettered by the Land Commission on that.

8542. After all, you see if the improvements are there, if the man is intended by the law (the tenant) to be safe, that satisfies the law, does it not?—It does, if it is an improvement that can be seen, and is really a valuable improvement.

8543. I am willing to grant you any evidence or protection desired as regards an improvement which is not self-evident, but the moment it becomes visible the proof is complete, and in regard to visible improvement you should require no proof. Now, in regard to the tenant who is not a custom tenant; does a tenant under the custom more invariably than the others make the improvement; does not the rule prevail all over Ireland that the improvements are made by the tenant?—All the improvements all over Ireland are made by the tenant. I have met with very few cases in which landlords have made improvements; they have contributed towards drainage, given slates or given timber for these things, and we have always given credit for them where they have been proved.

8544. Why should the tenants be put to this complicated system of presumption for what was done since 1870; presumption qualified by certain tenures between 1850 and 1870, and no presumption at all before 1850; does not that really drive you to compel the tenant, in order to show whether he is within or outside the presumption, to give as much proof as if no presumption existed?—Well, I have already said that I think it would be better to make the whole administration of the Acts, in that respect and every other respect, simpler.

8545. The effect of all this complication of improvements being made by the tenant is to transfer a certain portion of his property to the landlord. If there were a general presumption that unless the contrary were proved the improvements were held to be the tenant's, would there be any practical injustice; would the landlord not be able to prove, in the real cases where he made the improvements, that he did make them?—I think he would; I have had some very hard cases before me of tenant's improvements where my colleagues have reported to me that they found a considerable amount of reclamation and drainage which must have been done by the tenant which I was obliged to exclude. A tenant had probably not given any notice of it to the landlord, and if he had given notice he was not in a position to prove it; he had purchased the farm, and the man from whom he purchased had gone out of the country.

8546. Do you think a sale of the tenancy deprives him of the proof?—It does.

8547. We have heard about the landlord buying an estate and being deprived of proof, but what is there to prevent a landlord acquiring the records of his predecessor; surely he may make it a condition that he should get the books of the estate he purchases?—In private contracts he may, but in purchasing in the Landed Estates Court he would get no records.

Mr. *Sexton*—continued.

8548. The Landed Estates Court could make a rule, could not they?—There is no such rule there.

8549. They could make it, at any rate; if the presumption was with the tenant, the presumption would follow the fact; wherever the presumption is not with the tenant, the presumption conflicts as a general rule with the fact?—Yes.

8550. Now in regard to apportionment between landlord and tenant of the value of the improvements, we have had evidence which I consider conflicting. Some witnesses have told us that the only sum allowed is an allowance to repay the cost; others have said that it is an annual interest. Well, does it not appear to you that if the annual sum allowed for the improvements were simply an allowance to repay the cost, when the cost was repaid the allowance would cease?—Yes.

8551. The result of that would be that the tenant, at 5 per cent., in 20 years would get back his capital, but no interest on his capital; rather an unprofitable form of investment, is it not?—Well, in 20 years he would simply get back his capital.

8552. And no interest?—And no interest.

8553. Very well, if we regard it from the other point of view taken by some witnesses, that it is interest, interest upon what it has cost, then he gets the interest and never gets back his capital?—Yes, that would be so.

8554. Do you know of any other person, except the Irish tenant farmer, who would be expected by the Legislature to invest his capital either upon the understanding that he was to get back his capital but no interest, or to get his interest but never his capital?—No, it is not a commercial transaction that most people would enter into.

8555. I submit to you that he loses by it in either case, that it is an absurdly unprofitable investment, compared with any other investment a man could make with ordinary prudence?—Well, if upon the expiration of the first judicial term of 15 years the matter was fully considered, and the man came before the court after the expiration of that term, and the matter was fully considered again and he got for another 15 years' term what was allowed for it, he would have got all along interest on his capital.

8556. All the time any value in the capital except the bare interest would go to the landlord?—Well, the capital would be there.

8557. Eventually the capital would disappear. The tenant would have got the interest, the landlord would have had the rent; the man who invested the capital would have got the interest, the man who invested nothing would have got everything except the bare interest, is not that so; I think that plan will not hold water when it comes to be seriously examined?—Very possibly not.

Mr. *Macartney.*

8558. He can sell it all the time, I suppose?—He can.

Mr. *Sexton.*

8559. He can sell it at the true value I understand?—That is exactly so; he should get the competitive value; the true value.

Mr. *Macartney.*

8560. Does not he get the full value where he sells in the open market?—Where he sells in the open market he gets the full value.

8561. Who can stop him?—Outside Ulster the tenant cannot sell without giving the landlord his pre-emption.

8562. As a matter of fact, does the landlord always claim the pre-emption outside Ulster?—In the very few cases I have had he does.

Mr. *Sexton.*

8563. Now I wish to ascertain from you whether you attach great importance in regard to the future of Ireland, a purely agricultural country, to the encouragement given to the tenants to make improvements?—I do; I think it is highly important that the tenants should be encouraged to make improvements, and I may say generally that one of the effects of the Act of 1881 is very manifest. I could almost tell in going over the country the holdings on which judicial rents have been fixed by the way they are being cultivated now and by the improvements that are going on.

8564. Can Ireland hope to get on unless her soil is liberally improved, and diligently improved and looked after?—I think not. It is a purely agricultural country as you say.

8565. Who is going to do it?—Well, the tenants must do it, I expect.

8566. If they do not do it, it will not be done?—If they do not do it it will not be done now; you cannot expect the landlords to do it, the tenants must do it.

8567. We have heard lately, in reference to sub-letting, that there was some danger about unlimited sub-letting; of course you know very well that at the time when rigorous enactments against sub-letting were in force the population of Ireland was double what it is now?—Yes.

8568. The danger now appears to be not of an excessive population, but rather that the population may fall very much, so that the necessary labour cannot be procured?—I think that is a danger to be apprehended.

8569. If the tenants are not encouraged to make improvements in the soil, and are limited to the ordinary operations of agriculture, is it not likely that the labouring population will go away in greater numbers, that the tide of emigration may continue to flow as at present?—I think so; that will be the result.

8570. But if the tenants were encouraged to improve their holdings, the labour market would be supported and people kept at home?—It is desirable that every encouragement should be given to tenants to improve their holdings.

8571. Now as to the proportion of cases in which the letting value exceeds the cost, some

Mr. *Sexton*—continued.

people say very few cases; you said, I think, one-third?—About a third.

8572. Whatever may be the proportion, is the tenant encouraged, or is he fairly rewarded by a system under which he takes all the risk and then has to bear the cost of what he does without regard to the letting value coming back to him?—I have already said that I do not think it is equitable; the tenant in Ulster not only finds the capital, but runs all the risk.

8573. I am speaking now of all Ireland?—Yes.

8574. I would submit to you the question whether, looking to all the circumstances, the need of the country, the source from which improvements proceed, the condition of the labour market and everything else, it would not be just to allow the tenant such letting value as results from his improvements, seeing that otherwise they would never be made?—I have already said that I think so.

8575. Have you read Mr. Bailey's paper showing the exclusions from the fair rent provisions, this paper No. 3?—Yes.

8576. Have you found it accurate?—I think it is very fairly accurate; I think Mr. Bailey has afforded a good deal of information about it.

8577. And do you think any one of those cases of exclusion could be dispensed with against the tenant?—I do.

8578. Now a question about county roads: In valuing a farm your estimate of rent is influenced by the vicinity of a county road?—Yes, if it is conveniently situated as regards a county road that is taken into consideration in favour of the landlord.

8579. In favour of the landlord?—Yes, if it is conveniently situated.

8580. Who in Ireland provides the funds that make the county roads?—They are provided by the grand jury.

8581. The grand jury do not pay for them out of their own pocket; where do the grand jury get them?—The grand jury get them in the shape of county cess.

8582. Paid by whom?—Paid by the tenants.

8583. This seems rather a zigzag sort of equity; the tenant makes the county roads, and the landlord gets the advantage of them in the rent; is that the system?—He gets it in an indirect way.

Mr. *Macartney.*

8584. In every case?—In every case, where the farm is conveniently situated it is taken into consideration, and conversely where the farm is in a mountain two or three miles from a county road the disadvantages and the advantages are taken into consideration, both ways; but in valuing the farm you must understand the county roads are excluded from the area of the holding; they do not pay rent upon roads.

Mr. *Sexton.*

8585. I am speaking of vicinity?—They take out the gross area of county roads.

8586. The tenant having put the road there the landlord is paid for it in the rent?—Yes.

8587. You

Mr. *Macartney.*

8587. You make an allowance for it in the County Cess, do not you?—It is considered of course in the poor rates.

Mr. *Sexton.*

8588. It is considered like the price, the cost of production, the cost of labour, or seed, or anything like that?—Yes.

8589. But very remotely, the vicinity of a county road?—Yes, of course.

Mr. *T. W. Russell.*

8590. In all tenancies created since 1870 the landlord pays half, does not he?—Yes, since 1870.

8591. Are these cases numerous?—No, not at all.

Mr. *Sexton.*

8592. Not one in 10,000?—There is not one in a thousand perhaps, they are very few.

8593. I must ask you about this system of valuing land apart from buildings. Where you have an ordinary tillage holding in Ulster or elsewhere, does not the land derive a material part of its value from the presence of the buildings?—It does.

8594. Suitable and sufficient buildings?—I said on Friday last that it could not be worked without the buildings, it is one concern.

8595. When two Sub-Commissioners go out and first value that land without those buildings do they value that land as if those buildings were not there, or does their valuation of it contain an element due to the presence of the buildings?—That is a very difficult question to answer.

8596. It is a very important question?—It is very difficult question for me to answer. I do not see how any valuer can entirely exclude from his consideration the fact that the buildings are there.

8597. That is a sufficient answer for me?—I am only speaking now as if I were doing it myself. I do not see how I could look at the thing except as a whole.

8598. Very well; then the result appears to be that in valuing the land apart from the buildings the element of the value of the buildings enters into the value of the land?—Yes; that is the reason I said on the last day I was examined that I consider the holding should be valued as a going concern in the first instance, then no mistake can be made about buildings.

8599. The effect apparently of not doing it is that the tenant, although his buildings are nominally excluded from the valuation, pays upon them in the rent of the land, and then when the buildings are the landlord's, the landlord is paid twice, first in the value of the land, and secondly in the value of the buildings?—That very seldom arises.

8600. But the usual case is bad enough, namely, that the buildings being the tenant's, those buildings being nominally excluded and allowed to him, at least in regard to some material part, their value is included in the rent of the land?—Yes.

Mr. *Sexton*—continued.

8601. Do not you think that system should be reformed?—I think it ought to be reformed. I think the valuers should proceed upon a different basis altogether; it would be safer to do it in the way I have suggested.

8602. Taking the whole thing as a going concern?—Yes.

8603. Then take off the value of the buildings when they are the tenant's?—Yes.

8604. And state in your report, available to the parties, what was the going concern value, and how much you took off the value?—Quite so; and what the capitalised value of the buildings was, and what interest was allowed upon them.

8605. Does your Sub-Commission fix fair rent as if it were being fixed for a solvent person coming into the farm?—They do, so they inform me.

8606. So the tenant's interest is whatever interest you may give him in his improvements?—Yes.

8607. In fact the rent is fixed just as if the Act of 1870 or the Act of 1881 had never passed, except so far as regards the right to improvements?—Yes; that would be the result.

Mr. *Macartney.*

8608. Do you leave out of consideration altogether, then, the tenure of the tenant, the right of the tenant?—Not in Ulster.

8609. No; but anywhere else?—Well, really I do not know whether that enters into their calculation anywhere else.

8610. Your Sub-Commission, then, do not consider that the Act of 1881 conferred upon the tenant any additional security for his tenure; do I understand that to be your answer?—I really do not know whether they take that into consideration or not.

Mr. *Sexton.*

8611. The drift of evidence before us is this: that a fair rent is what a solvent person coming in would be willing to pay from year to year?—Quite so.

8612. That ignores any special interest in the tenant except his improvements; in the old rents you have operated upon have you found them to be the rents that were in force up to 1870; the point of my question is, Had the rents which you reduced, usually, or in many cases, been reduced since 1870?—No; not much reduced since 1870.

8613. They may have been increased even, in some cases?—Yes, or reduced. The report in each case shows that.

8614. Yes?—There is a paragraph in the pink form which I am obliged to sign.

8615. Yes, I know that?—I take this case of Robb's. Here is his file before me, and I find that I certified there that the amount of rent in 1875 was 120*l.*, raised in 1877 to 145*l.* That I have to fill in, under the heading of "Date at which rent was last changed, and amount of change." I do that from the evidence; and I ask in every case whether there has been any alteration of rent.

Mr. *Sexton*—coutinued.

8616. Generally speaking, the rent you have had to reduce were the old rack-rents?—The old rents, yes.

8617. Fixed when the tenant had no legal interest?—Yes.

8618. Was liable to eviction and to any rent that might be charged?—Many of them were rents that were raised by purchasers in the Landed Estates Court, and very considerably raised.

8619. It appears to be granted that on farms all over England, which is not so poor a country by any means as Ireland, reductions have been voluntarily given of 40 per cent. in the last 10 or 12 years?—I believe they have made large reductions.

8620. But in Ireland, where you have had to lower the rents by the direction of the Legislature to bring them to what a solvent tenant would be willing to give, giving the tenant the result of his improvements, the net result appears to be only 20 per cent. reduction. Will the position of the tenant in regard to the effect of his improvements upon his rent be the same at the opening of the second statutory term as it was at the first?—Really I cannot answer that question.

8621. I mean in Dunseath and Adams Chief Baron Palles suggested that the tenant had no perpetual right until after the fair rent was fixed, did he not?—Yes.

8622. Of course that argument will not apply at the opening of the second statutory term; his perpetual right will have been already acquired in that case?—Yes.

8623. I will draw your attention, before I conclude, to the remarkable fact that although this system has been 13 years in force, only 180,000 rents have been fixed out of nearly half a million of agricultural holdings; what is your general opinion of the reason of that; why have so many holdings been dealt with by agreement, and why have so many been left out? Do you think it is generally due to abatements from year to year, or duress, or to some difficulty under which the tenants labour?—In the West of Ireland I have found a great many tenants remain out of court because they are getting very large abatements, 20, 30, and 40 per cent. abatements; and I think that those tenants do not like to run the risk of losing those abatements by coming into court; they are satisfied to go on just as they are; then there are a great many under eviction.

8624. Then there are many in arrears?—There are many in arrear, and those that are in arrear cannot come into court.

8625. There are many afraid of the cost of appeals?—Yes.

8626. Especially those poor men who have come into court with their originating notices, and thrown themselves on your mercy without any skilled evidence or solicitor?— Yes, and some of these hapless men have to travel in Galway probably 50 miles to get to the court from Clifton, and in the county of Donegal they would have to go from Glenties, on the West Coast, away to Lifford, and from Carndonagh to Lifford, at least a distance of 50 miles, and where the rent is 4*l.* or 5*l.* it is not worth the cost and labour.

Mr. *Sexton*—continued.

8627. There are many who are afraid of surrendering turbary rights and other rights that they now enjoy if they come in to fix rents?—That may operate too. Turbary is a very valuable thing in Ireland. There are 2,000,000 of acres of turbary in Ireland.

8628. I would ask you generally if you would advise Parliament, so far as it is possible, to clear the way to the court for all these tenants, and to give the court such power as might be necessary to protect the statutory term and the fair rent in view of these circumstances of arrears, turbary rights, and so forth?—I would; I believe firmly it would be to the interest both of landlord and tenant that it should be done.

8629. And would you abolish appeals except on the question of value?—Yes, I would.

8630. And as to the exclusion of holdings under Section 58, now that the system of fair rents has spread through Ireland to such an extent as to include 300,000 holdings out of about half a million, do you consider it expedient that these exclusions should be removed and that any tenant holding land in Ireland for the ordinary purposes of agriculture or pasture should be allowed to have a fair rent fixed?—I do. I do not see why every tenant who pays rent out of land in Ireland should not have equal privileges.

8631. You do not think the landlord has any cause to complain if he gets a fair rent?—I do not think so; it all depends on whether he gets fair rent or not. He cannot get more for the thing than it is worth.

8632. No matter what the holding is, demesne land, town-park, pasture land, or anything else?—No; I would propose to draw the line at demesne land. I think if the landlord has his demesne and wishes to retain it, he should be at liberty to do so.

8633. Quite so, if he wants to resume it, but would you have him treat it as once demesne land, demesne land for ever?—No, if he has undemesned it.

8634. Where it is devoted to ordinary uses and the tenant works it for a living and lives on the property, would you give him a fair rent?—Where the landlord is deriving rent out of it as an agricultural holding.

Mr. *Hayes Fisher.*

8635. You stated that you could almost tell, on going through Ireland, the holdings on which fair rents have been fixed by the great number of improvements which have been made; might I not infer, therefore, that the tenants are under no apprehension that they will lose the full value of their improvements when the next revision takes place?—I think that is a very fair assumption. I think they feel now that they have got a security which entitles them to improve their lands, and I think the more you increase that security the more they will improve them.

8636. They are already making such large improvements that they are under no apprehension of not getting the full value of their improvements?—They are. In districts where we fixed judicial rents in 1881, 1882, and 1883, there are manifest

Mr. *Hayes Fisher*—continued.

manifest improvements in reclamation, drainage, and fences.

8637. Mr. Sexton asked you whether the landlords, with regard to purchasing estates and proving their improvements, might not purchase the records from their predecessors; now what is your experience as regards small estates in Ireland; are there any records as to the improvements that the predecessors in title have made?—No.

8638. Would not the landlords in these cases have great difficulty in proving improvements?—They might.

Mr. *Sexton.*

8639. Do they make any improvements on small estates?—Well, certainly not the landlords that have purchased in the Landed Estates Court. On the large estates in Ireland there would be no difficulty. I speak principally of Ulster; I can speak more of Ulster than of the rest of Ireland.

Mr. *Hayes Fisher.*

8640. They are generally kept on large estates?—They are generally kept on large estates; on such as the Downshire and the Duke of Abercorn's estate, or large properties, in the North the records are kept. They are always produced to me; they can tell the amount of perches of drains, and the amount allowed for them.

Mr. *T. W. Russell.*

8641. Are there any sales except under the Purchase Act?—I think not.

Chairman.

8642. No transfer of land from landlord to landlord?—None that I know of.

Mr. *Hayes Fisher.*

8643. You have stated that in a third of the cases that came before you, where attempts have been made to settle out of court, the tenants told you that some duress had been brought to bear upon them, and that some of them told you they did not know they were signing an agreement for 15 years. Did they tell you what they did think they were signing?—I do not think I made use of the word "duress," nor did I mean to convey that there was any duress.

8644. Just that they did not understand?—They signed the agreements, and were sorry they had signed them.

8645 What did they think they were signing, if they did not think they were signing an agreement for 15 years?—I cannot tell you. Their statement was that they did not consider it was a judicial term; they did not consider they were bound for 15 years.

8646. Were the landlords or their agents in court at the time that these statements were made?—Generally the solicitor for the landlord was there.

8647. Did the solicitor let these statements pass without any explanation?—In some cases, where it was capable of explanation, they did give an explanation; but in a great many cases they said, "I call upon you to deal with this as concluded we prove it," and that is enough.

8648. Did they allow this kind of alleged sharp practice to go by without giving any explanation?—Oh, indeed they did; very often.

8649. On what estates did this take place?—Well, I have abstained from naming any estates or any people, as far as I could, and I would prefer doing so.

Mr. *Macartney.*

8650. Please name them?—I prefer not to do so.

Mr. *Hayes Fisher.*

8651. Could you say in what parts of Ireland this took place?—In Ulster, County Down, and County Antrim.

8652. Are the tenants, do you think, getting more wary now?—I think they are; I think you would find it very difficult to get a tenant now to sign an agreement without legal advice.

8653. Then you would hardly think that the tenant had sufficient protection; or do you think he needs protection?—Not so much as in the past, perhaps.

8654. Now on the question of subdivision, a question that interests me very much, I should like to ask you one or two questions: Have you formed any opinion in your own mind as to what extent of holding is required to support a man and his wife and family, of good land?—Of good land?

8655. Yes?—I can only form an opinion from experience. I have seen two families living upon 20 acres of land, at a rent, say, of 10*l.* or 15*l.*

8656. That is a single family?—Two families.

8657. What extent of holding would be required to maintain a single family, do you say, on good land?—That depends upon the position of the tenant, very much. There are some tenants in the West of Ireland who have only a few acres of arable land and 20 or 30 acres of bog, and some people live upon it.

8658. Do you think a man with a wife and family could support himself on 10 acres of land in the West of Ireland?—Ten acres of arable land?

8659. Ten acres of ordinary land in the West of Ireland?—No, not on 10 acres of ordinary land in the West of Ireland, because the ordinary holding in the West of Ireland would probably be three acres of arable land and seven acres of bog.

8660. You have stated that you would allow sub-division to two sons; would you allow that in the West of Ireland, although those 10 acres were unable to support a family?—Oh, no; I think I mentioned the rent there, did not I?

8661. The rent of 10 acres?—I should say 20 acres of land at a rent of about 10*l.*

8662. Well, we will take that?—You will very seldom find that in the West of Ireland.

8663. Where you did find it would you allow that?—I would in Ulster.

8664. Would you fix always a limit of 10*l.*?—That would certainly be the minimum.

Mr. *Hayes Fisher*—continued.

8665. Have you thought of it from the point of view of purchase. Might not an estate in case of purchase be seriously prejudiced in security if you were to allow this sub-division?—I think that a purchaser would be better off with the two tenants than with one of them; but what was in my mind with regard to that sub-division was this: the case which so often occurred before me is a case where a man dies and leaves his two sons in possession of the holding with their two families; they have been there probably 10 or 15 years, and each of these tenants, to the knowledge of the landlord, has been contributing 5*l.* towards 10*l.* rent; they have actually been going into the office (it has been proved over and over again before me) and have each laid down their 5*l.*, and yet the landlord would not recognise them as separate tenants.

8666. In the case of two daughters whose husbands lived on the farm, would not it be a similar hardship?—I do not think it would make much difference.

8667. You stated that you would only allow it in the case of two sons?—The principle would be the same if there were two daughters who married two men who worked the farm.

8668. You would allow it in the case of two daughters you say?—I would apply the same principle.

8669. Where they are members of the same family?—Yes; and where the Sub-Commission considered it would not prejudice the interest of the landlord or affect his security for the rent.

8670. You would leave that to the discretion of the Sub-Commission?—I would. I would not say I would do it absolutely in every case; but where I found it would not prejudice the landlord's interest, I would allow it.

8671. Would you say that it is contrary to public policy?—To a certain extent.

8672. But you would allow it in this particular case?—I would. I think it is desirable that the tenants should get quieted in possession of their holding as soon as possible, and all these questions keep them in a constant state of irritation. A man is very much dissatisfied if he finds that his neighbour goes into court and gets his rent settled on his 20 acres of land, and that he cannot get his rent fixed because he is living with his brother on 20 acres of land adjoining.

Chairman.

8673. On a bye question you said that as you went through Ireland you could tell the farms on which judicial rents had been fixed by their improving appearance; in the Lords Committee the question was put (question to which we have had reference made) whether there was any advantage in getting rid of the "rack-renter" (this is the form of the question put by a noble Lord) so long as the "rack-lender" remained; the witness said no, he feared that no advantage would come if the "rack-lender" took advantage of the better circumstances created by the abolition of rack-rent. Have you found in those observations of yours through Ireland that the tenants get indebted to the money-lenders?—No.

8674. That has not been the effect?—No.

Mr. *M'Cartan.*

8675. Mr. Hayes Fisher was asking as to the small farms; what was the smallest area of a farm which would support one family; would I be incorrect in stating that as a general rule in Ireland the small farmers do not live by their holding; that their children are employed at service or over here in England, or in America, and that out of their earnings, to a large extent, the rent is paid?—That is so to a large extent in the West of Ireland; I find the rent is mainly paid by the wages they earn in England and Scotland, both by the men and by some of the daughters.

Mr. *Macartney.*

8676. Is it your view then that these small holdings of two of three acres are looked upon as accommodation, the house to live in, and so on?—Oh, dear, no; not at all.

8677. Then how do you explain it; you say they earn the wages in England?—They do.

8678. Then what do they come over to Ireland for?—Come over to Ireland for?

8679. What do they stop in Ireland for if they earn the wages in England and Scotland?—Do you put the question to me: Do I consider those accommodation holdings?

8680. You do not look upon them as farms, I understand you to say; I understood you to say to Mr. M'Cartan that they did not support their families out of those holdings?—I think it is a matter of notoriety.

8681. Quite so; I quite agree with you?—I think it is a matter of notoriety that the farms in the West of Ireland, in Galway, Mayo, and even in parts of Donegal, would not support the people who live upon them, and if it were not that they earned wages in England and Scotland they could not possibly pay any rent.

8682. I quite agree with you, and what I want to put to you is, that earning their wages in England and Scotland they find it convenient to retain this place in Ireland, as a place where they find a house and accommodation ground connected with it?—They find it not only convenient——

8683. But probably cheaper?—I suppose it is cheaper. It is their home in Ireland; they have lived on it for years, and they return to it with their wages, and pay the rent.

8684. For years they work in England and Scotland, and all the while keep their home in Ireland?—And if they did not go to England and Scotland they could pay nothing.

Mr. *M'Cartan.*

8685. A great deal of what they earn there they pay to the landlord?—The landlord gets the first of it.

8686. Is not what you say about the West of Ireland equally true about large portions of County Down and County Antrim along the coast?—Yes, there is a great number along the coast; a number of the tenants come over here to fish.

8687. These little holdings afford the poor people a home, do they not?—They do.

8688. And

Mr. *M'Cartan*—continued.

8688. And with very scanty fare?—Very scanty fare.

8689. Now, as to sub-letting, is it your experience that the provisions against sub-letting and sub-division are used by the landlords, not so much to prevent the sub-letting or the sub-division, as to prevent fair rents being fixed when they come into court?—Well, in the majority of cases of sub-letting and sub-division they have gone on for a few years, and the landlord has certainly stood by and not objected to it until the case comes into court.

8690. Then when for the first time they come into court to get a fair rent fixed, the landlord makes use of the circumstance as to sub-letting?—I had a case before me in Armagh in which there was a sub-letting of a small portion of a house and two acres of land, and it was proved in court before me that that sub-letting had been in existence for 21 years.

8691. And it never was challenged until they came into court to get a fair rent fixed?—It never was challenged.

8692. I understood you, as to town-parks, that you see no reason why the artificial boundary should continue, so long as the landlord would get the rent that he was entitled to for the holding?—So long as he gets a full agricultural or proximity rent or accommodation rent, or whatever it may be, whatever rent the holding would bear, taking every circumstance, its proximity to the town, its accommodation, and whatever it would bear, into account.

8693. Contrary to the view held by Mr. Doyle, it is your view that there would be no trouble on the part of the Commissioners in fixing rent on such holdings?—Oh, no, none whatever.

8694. It would protect the tenant against eviction, and give him some security?—It would.

8695. And deprive the landlord of nothing, except the right of eviction?—That is so.

8696. Now here is a case that affects the Ulster custom that I want to call your attention to. It is a case of William Harper, whom you know, I think, a solicitor in Belfast. He held a farm (a holding) by lease. The lease was dated May 1874; it was made after the passing of the 1870 Act. A new dwelling-house, and other outbuildings had been erected prior to the date of the lease. He took advantage of the 1887 Act to come into court to have a fair rent fixed, and the question was raised by the landlord that, as he came into court now, the buildings erected before the lease belonged to the landlord, rent should be charged on them, although, under the case of Adams *v.* Dunseath, he was entitled to the buildings as his own during the whole term of the lease which had some years to run; is it the law, as has been held in this case, that what the Act of Parliament gave with the one hand was taken away by the other hand, and that rent was chargeable upon the buildings?—That would be so, but I do not know the name of Mr. Harper's case.

8697. It is not a case where the buildings were too good for the holding or unsuitable; the case

Mr. *M'Cartan*—continued.

was decided by the Land Commission, and is at the present time before the Court of Appeal; it was decided by the Chief Commission?—I do not know the case.

8698. When the tenant came into court under the 1887 Act, he got his leasehold converted first of all into a present tenancy, and then to have a fair rent fixed; the court charged rent upon the buildings which were made prior to the lease?—I think that is very likely.

8699. The whole policy of the 1870 Act was to protect the tenant, and to prevent him from contracting out of the improvements he made?—Yes.

8700. That is where the Ulster custom did not exist?—Was it the policy of the Act of 1870?

8701. I believe it has been held now by Justice Bewley that that did not extend to prevent him contracting out of the Ulster custom?—I should like to see the report of the case before I could offer an opinion upon it.

8702. Here are Mr. Justice Bewley's own words: "There is no provision in the Act of 1870 prohibiting the tenant of an Ulster tenant-right holding from contracting himself out of the benefits of the Act in respect of the custom. If a person is free from any legal disability there is nothing to prevent him from contracting himself out of the provisions of any Act intended for his benefit unless he is prohibited or restrained by statute;" and therefore it would appear to be quite competent for any tenant holding under the Ulster custom to contract that he should not seek to enforce his custom in reference to any particular item of improvement. It therefore goes to show that it would be quite competent for the tenant of the holding to which the Ulster custom applied to contract out of that, and it appears that owing to the absence of such a provision, this case of Mr. Harper's was decided against them, but it was to come before the Court of Appeal. At all events, is it your view that tenants in Ireland should be prevented from contracting so as to give up their improvements to the landlord except by purchase or proper compensation of some kind?—I think the policy of the Act of 1870 was a good policy, and I think it should be carried out, and if the law does not carry it out, that the law should be amended so as to make it perfectly clear.

8703. And if the law was charged in that direction, it would protect the tenant from injustice when in the power of the landlord?—It would be giving better effect to the policy of the Act of 1870.

8704. There is another matter which I think has not been much touched upon yet, that is, cases where the landlords borrowed from the Board of Works money to make drains on their farms. There have been a considerable number of holdings in Ireland on which drains have been made by money which the landlord borrowed from the Board of Works, and in respect of which he charged the tenants interest which was afterwards embodied in the rents. Have you any experience of such cases?—Yes, I have. I have met with many cases where the landlord has

joined

Mr. *M'Cartan*—continued.

joined a tenant in going to the Board of Works to borrow money for the purpose of draining.

8705. And when the money was borrowed did he charge the tenant the interest, or, in other words, did the tenants pay to him what he was obliged to pay to the Board of Works in instalments?—You are aware the Board of Works advance money to be repaid by instalments which cover principal and interest in a certain time?

8706. Yes?—Those instalments were always charged to the tenant, and on some receipts that were produced before me there was set out so much for rent and so much drainage instalment.

8707. Have you met any cases in which those instalments which were charged in the rent continued to be charged after the principal had been paid?—Yes, a good many. They are very often, as you say, absorbed in the rent; they ceased to set out on the face of the receipt so much, say, for drainage, and so much for rent, and the receipt was given in the ordinary way, a lump sum for rent.

8708. A lump sum for rent; but it did include the instalment?—It did include the instalment. We had evidence before us that at the particular time the rent was increased that rent exactly represented the amount of the drainage instalment.

Mr. *T. W. Russell.*

8709. And had the drainage instalment been paid off?—Yes. This was probably 30 years afterwards.

Mr. *M'Cartan.*

8710. I dare say in these cases those were circumstances which the Commissioners were bound to take into consideration?—It came before us as an increased rent, that is the way it came before us, and at that time the tenant's explanation was that he had for some years paid in the shape of a drainage instalment, and that afterwards that has gone into the rent.

8711. In your experience I suppose you have met with a great many cases where estates had been re-valued, either before the passing of the 1881 Act or before 1870?—Oh, yes; a valuer had gone upon them; a great many of them were re-valued for sale in the Landed Estates Court.

8712. And some of them were re-valued not for sale, but for another purpose?—Yes.

8713. Is it your experience that the re-valuation of the rents upon an estate was always done with the object of increasing the rents?—Well, certainly I never had a case before me in which the re-valuation reduced the rent; but I have often been puzzled by the valuations, because they seemed to be more a percentage put upon the rental of an estate than each individual farm valued upon its own merits, as we do.

8714. Did you ever meet with a case (I do not want to mention the name) where in open court the gentleman who had made the re-valuation swore that he was paid by the percentage of increase that he made?—I am afraid you are treading now upon very professional grounds, so far as you are concerned yourself. You refer to a County Down case?

Mr. *M'Cartan*—continued.

8715. I do; yes?—It was so stated.

8716. That the gentleman who re-valued the estate was paid by the percentage of increase that he put upon it?—It came out in evidence before me that he was remunerated for his valuation by a percentage upon the amount that he added to the existing rent.

Mr. *T. W. Russell.*

8717. Was paid by results you mean?—Yes, was paid by results.

Mr. *McCartan.*

8718. Do you remember the case of Cunningham *v.* Boyle?—Yes.

8719. What was the effect of the decision in that case?—That was a case I heard at Ardara, in County Donegal.

8720. What were the facts of the case?—The facts of the case were that Boyle was a tenant of the Marquis of Conyngham; Boyle sold his interest, and the landlord objected to take the incoming tenant on the ground that the incoming tenant's holding did not adjoin Boyle's holding; at least, the holding that Boyle sold. Well, I fixed a rent on it, although I did not consider that the usage of the office was very clearly proved, but that was a usage of the custom, and I fixed the rent. I was reversed in that, it was a very small case, and the Land Commission dismissed the application. Boyle appealed to the Court of Appeal, and the Court of Appeal confirmed the Land Commission, but that was the point in the case.

8721. There was a very big principle involved?—Yes.

8722. That is a modification of the Ulster custom?—Yes, of that usage.

8723. There is another case you know of, Wilson's?—That was a County Antrim case.

8724. In that case I understand the rent was fixed at, I think, about 120*l.* by the Sub-Commission, the fair rent was fixed at 120*l.*; Mr. Byrne and Mr. Weir, I think, were your colleagues at the time?—Yes, they were my colleagues at the time.

8725. There was an appeal, and a court valuer was sent down, a Mr. Jephcott, who is now a Sub-Commissioner, and his valuation was 130*l.*?—Yes, that is so.

8726. And the Chief Commission fixed the rent on his evidence?—The Chief Commission increased our rent of 120*l.* to 130*l.* on Mr. Jephcott's report and whatever evidence they heard.

8727. That is to say, one gentleman, Mr. Jephcott, came down, and on the evidence he gave, or rather the report he gave, they increased the rent fixed by two lay Commissioners, who went out and inspected the farm, and were competent, I suppose, to do the work?—They were both very competent.

Mr. *Brodrick.*

8728. With regard to this question of subdivision, do you think it is in the interest of the State that the present number of holdings in Ireland should be largely increased?—I do not think

Mr. *Brodrick*—continued.

think that they should be largely increased, but, as I have said before, I am speaking of cases where subdivision has taken place, and has been in existence.

8729. When you say existing, what you mean is that certain people have been cultivating the land together?—Yes; quite so.

8730. Is not that rather a different thing to subdivision?—No, I do not see that; there may be a technical difference as to the paying rents separately.

8731. Is it not your experience that where two sons of the same father (the case you put) cultivated the holding with the father, the holding is treated as all one; that it is not divided for the purpose of the rent as a rule?—He does not divide it, you know, until his death; he generally keeps control over it himself; but at his death the two parties are there in occupation; they have each been contributing towards the rent for a number of years, and I cannot see that it is any advantage to the landlord to say: "You shall not have a rent fixed upon this because you are both there"; he has been taking the rent from them both.

8732. Do not you think that if you once recognised the principle of sub-division in this way you would largely increase the cases of sub-division?—I do not think so; there is not a disposition to sub-divide; there are not so many people there to sub-divide the land amongst.

8733. You are aware that in the first 50 years of this century sub-division increased very largely?—I think it did to a rather disastrous extent.

8734. And that great poverty followed amongst the population?—I do not know; we are not overburdened with population in some parts now.

8735. In some parts, but in other parts you are; is it not your experience that it is the fact that a man who cannot get land when his father dies will emigrate; does it not tend to increase emigration?—I do not know.

8736. One family or the other goes?—I find a great many of them go before the father dies.

8737. Could not you kindly answer my question: Is it not the fact that when the head of the family dies, it very often happens that some members of the family go away and leave the land?—I suppose it does happen, but I have not much judicial knowledge of it. My experience would tell me that it does happen frequently.

8738. Do you think for the general agricultural prosperity of the country that you do any good by facilitating sub-division at all?—I would not facilitate sub-division, but where it exists really to get the people quieted in their holdings, and satisfied and contented, if I was a landlord I would not raise the objection; I would say, "Fix the rent in the name of both these two men."

Mr. *Sexton.*

8739. Is it not a fact that when once a judicial rent is fixed sub-division becomes a breach of the statutory condition?—You cannot sub-let after that.

Mr. *Brodrick.*

8740. You have rather strong views upon the subject of sub-letting, have you not?—Not very strong. I try to give you the result of my experience.

8741. You told Mr. Macartney, I think (Question 8266), that in your view "the restrictions on sub-letting to other than labourers required for the cultivation of a holding ought to be abolished"?—I do think so.

8742. On what ground do you think the tenant should be allowed to sublet that which he accepts from his landlord at a fair rent?—There, again, these sub-lettings have taken place, and are in existence; the tenants have been sub-letting and got contributions towards their rent. Suppose there is a holding of 40 acres in the county of Antrim, which, we will take it, has got six or seven cottiers' houses upon it, all under the one roof, perhaps those houses were used previously by hand-loom weavers, probably some members of the man's family worked at weaving; he has those houses, he turns them to account and lets them off at 6*d.*, 9*d.*, or 1*s.* a week, with an acre of land attached, he lets them to a carpenter or to a blacksmith, people who are useful in the neighbourhood, and I do not see that it is good policy to say, Because you have done that and are giving encouragement to people to come and live here and help to pay the rent, you shall not have the rent fixed because these people are in occupation.

Mr. *Macartney.*

8743. Do you know those rents of your own knowledge?—Sixpence, 9*d.*, and 1*s.*

8744. Yes?—Yes, I do.

8745. In the hand-loom district?—I do, certainly; especially round about Ballymoney.

Mr. *Brodrick.*

8746. Are you not aware that in many of those cases where it is sub-let to others it is sub-let at very large sums?—That is for the land you mean?

8747. Yes?—The houses do not run more than from 6*d.* to 1*s.* a week, and the tenant keeps them in repair and pays all the taxes upon them.

8748. If the tenant does not want to farm the land himself, do not you think the landlord ought to have something to say as to whom it is let to?—These are very small portions of the holding that I am speaking of now; merely cottier holdings.

8749. Let us get to the bottom of this; you think the tenant should have a fair rent, do not you?—Yes.

8750. And that he shall be allowed to sell his tenant-right?—Yes.

8751. Even when he has been allowed to sub-let any portion of the holding he likes; that is your contention?—I am speaking of these sub-lettings which have taken place, sub-lettings that are there; he cannot sub-let after he gets his judicial term fixed; he could not sub-let an inch after that.

Mr. *Brodrick*—continued.

8752. If he has 20 acres, and he can only farm 10, he is to be allowed to sub-let the other 10?—If he has had that other 10 acres sub-let for 10 or 15 years, with no written or express consent of the landlord, yet if the Commissioners found that it was sub-let and that the landlord had acquiesced in that sub-letting for 15 years, I would not let the landlord come in at the end of that 15 years and say "You shall not have a rent fixed on that, because you have sub-let those 10 acres," when he had stood by and allowed it to take place.

8753. But you would give the man a chance after he had got a fair rent fixed, as I understand?—Oh, no, I do not say that; I would not disturb the present law at all. He is precluded from sub-letting during the statutory term.

Mr. *Sexton.*

8754. You would not interfere with the statutory condition?—I would not interfere with the statutory condition in that respect at all. I am dealing with past cases, and there are an immense number in Ireland. I am dealing with the thing as it exists now upon holdings upon which no judicial rent has been fixed; but so far as the future is concerned I would allow the statutory restriction to continue to operate.

Mr. *Brodrick.*

8755. When you say "in regard to past cases," would it not be fair that the landlord should claim that the sub-tenant should hold direct from him; that the farm, in fact, if split up, should be split up for the purposes of the fair rent?—That would involve an inquiry into this, How much the sub-tenants were paying the tenant.

8756. Quite so?—And if the landlord chose to take over these buildings and these small gardens, and reduce the tenant's rent by the amount that the tenant had been receiving from his sub-tenants, it would probably be equitable enough.

8757. Would not that be a fairer process?—I think that would be a very fair process.

8758. With regard to these agreements, which you say Lord Donoughmore's Committee affected, you answered a great many questions of Mr. Macartney upon that point; as to this general belief, which I heard for the first time the other day, that the whole of the Land Act was going to be done away with and repealed, I want to know how did that come before you; did that come before you in court at all?—Only so far as some of these agreements turned up. Of course it was never stated in court to me, "I signed that agreement because I was afraid of Lord Donoughmore's Committee, or of the effect of Lord Donoughmore's Committee." That never was stated, but it certainly was felt in the North of Ireland, Down, Antrim, and Derry, with which I was more connected. It did prevail very largely among the people.

8759. I want to ask you to kindly give us some justification for that statement. I should like to know whether in the North of Ireland at that time they did not know that there was a very large majority, the same majority which passed the Bill, still existing in the House of Commons and which existed for several years afterwards. I want to know if there is any justification for this idea. You have said, I think, that there was a tendency also to fix the rents higher in consequence of the sitting of the Lords' Committee?—Oh, no; I do not think I said that; if I did say that you must have misunderstood me.

Mr. *Macartney.*

8760. I think you told me it had no effect whatever upon you?—I did.

Mr. *Brodrick.*

8761. I thought I recollected that you said there was a tendency on the part of the Sub-Commissioners to fix the rents high?—I did not say that.

8762. You answered Mr. Sexton with regard to the question of Robb *v.* Downshire, which is one of the cases you decided. I do not think you told Mr. Sexton; I do not think he asked you, did he, what the previous history of that case was before the tenancy got into the hands of Mr. Robb?—No, he did not ask me.

8763. Could you give us exactly the facts of that case?—I can. There was a lease of 1855.

Mr. *M'Cartan.*

8764. There were two cases, I believe?—There were two cases; one of them was a rent of 145*l.*; then there was a similar case where the rent was only 20*l.*, which was the case of Mr. Robb's son, Mr. Robb junior.

Mr. *Brodrick.*

8765. The lease which Mr. Robb bought was a lease made to a Mr. Weir, was it not?—That was a demise of the 11th January 1855 to one Thomas Weir of 94 acres 2 roods 11 perches statute measure, for a term of 21 years, at the yearly rent of 120*l.* It was an ordinary agricultural lease, containing the usual covenants to be found in such leases on Lord Downshire's estate, and amongst other provisions it bound the lessee to pursue a certain course of husbandry.

8766. Was there any record of the expenditure on the holding by Mr. Weir, the tenant under that lease of 1855?—I am not sure about that; I think it is very likely.

8767. There was none shown, was there?—I think not.

8768. Not that you know of?—No.

8769. I was informed perhaps you would know that from your report that 100*l.* was paid?—No, that was not so.

8770. At all events the holding was near the town of Belfast, as well as I recollect?—I have it here, but I think it was four or five miles from Belfast; it was certainly very close to Belfast.

8771. When did Weir sell his tenancy; is it a fact that he sold the tenancy in 1883?—I think that was the time that Mr. Connor bought; he sold his interest on the 1st February 1883 to Mr. Charles C. Connor for the sum of 1,900*l.*

8772. Therefore in point of fact this is what he

Mr. *Brodrick*—continued.

he got for a tenancy for which he paid nothing; he held it on a lease at 14*l.*, and got 1,900*l.* for his tenancy?—Oh, no; he did not get 1,900*l.* Do you mean Mr. Robb or Mr. Connor?

8773. I am speaking about Mr. Weir; Mr. Weir, as I understood you, got 1,900*l.* off Mr. Connor?—I will give you the facts, perhaps that will be the shortest way: Mr. Weir, who had been tenant under a former lease, dated 1855, and made to his father, sold his interest on the 1st February 1883 to Mr. Charles C. Connor for a sum of 1,900*l.*, and Mr. Connor, in consideration of 2,000*l.*, assigned his interest to the present tenant, Mr. Robb, on the 10th October 1883.

Mr. *Macartney.*

8774. Was Mr. Connor, the tenant, a farmer?—No, he is a Member of the House.

Mr. *Brodrick.*

8775. So that what was bought by Mr. Connor, and subsequently by Mr. Robb for 2,000*l.*, was the bare right of occupancy and the advantage of the lease?—It was the tenant-right of Mr. Weir in that holding.

8776. Mr. Weir cleared 1,900*l.*, and Mr. Connor cleared 2,000*l.*, and in that way there was 2,000*l.* cleared out of that holding?—Do not take that from me, I am not going to say "yes" to that. He did not clear that, I take it, because if Mr. Weir sold to Mr. Connor for 1,900*l.* he sold him all his improvements and his buildings; he did not clear 1,900*l.* out of it; probably what he sold may have cost him the whole of the 1,900*l.*

8777. What were the improvements, and what were the buildings, because none were proved, as I understood?—Oh, yes; there were improvements proved.

8778. Perhaps you can tell us, as you tried the case; I thought that was what influenced your mind, that he had sold the right of occupancy?—This is the file; this is the best evidence I have on the subject: "Improvements allowed to tenant, and found to exist after inspection, to be stated in detail:" "Extensive alterations and improvements in dwelling-house, offices, and labourers' cottages, also in gate-lodge; 50 acres drained, including 1½ acres which was claimed as reclamation; large wooden shed, buildings, except above named as tenant's improvements."

8779. What did you assess the value of those at?—That is just where the pink form is defective; it does not tell. I have been advocating that it should tell what they were assessed at.

8780. You think those improvements are what he sold?—They are.

8781. You are not prepared to say that those improvements are worth 1,900*l.*?—No, I am not; it represented a large portion of it, I am sure.

8782. But it is obvious, is it not, that Mr. Robb in paying 2,000*l.* was buying, to a great extent, the proximity of the land to Belfast?—That was certainly an element.

8783. Now you are in favour, are you not, of town-parks being excluded from the Act?—Not being "excluded."

Mr. *Brodrick*—continued.

8784. Being admitted to the Acts?—Yes, being admitted.

8785. At present there is no tenant-right on town-parks, is there?—In one or two small districts there are; around Ballymoney there is.

Mr. *T. W. Russell.*

8786. And Ballycastle, I think?—And Ballycastle; but it is the exception.

Mr. *Brodrick.*

8787. But in the majority of towns?—In the majority of towns there is none.

8788. In the majority of towns in the hands of the landlord or let from year to year or on short terms?—Yes.

8789. Would not the fact of your fixing what you call an agricultural rent, with allowance for proximity, immediately create a tenant-right on those holdings of town-parks?—No, I think not; it would immediately create a judicial term.

8790. Supposing your contention were held good, and that the law allowed you to-morrow to give a man a 15 years' term in a town-park, do you suppose he would not sell the tenant-right of that for a large sum?—He would sell it; if a tenant in Munster, he would sell his judicial term; it would be just the same thing, except that he would get more money for it.

8791. Would you advocate putting town-parks precisely in the same position, subject to proximity?—I would give the landlord the full value; I do not see any objection to it.

8792. Supposing a landlord wanted the land to improve a town by letting a piece of ground, or anything else, you would make him pay the tenant his tenant-right?—No, I should not.

8793. What would you do?—That is a matter which would have to be considered by the court. If he required the land for building purposes, and he could prove it was to the advantage of the improvement of the town that he should have a portion of this taken up, I would certainly allow him to take it up at any time, and not wait until the expiration of the 15 years.

8794. If you want land for any purpose in Ireland, is there any class of land you can get free of tenant-right, except town-park, demesne land, or land in the landlord's hand; is there any land you can get for any purpose?—Not in Ulster, where tenant-right prevails.

8795. Quite so; you have got to pay the tenant-right?—Yes.

8796. And are you prepared to tell me that there is any class of land in Ireland out of Ulster which would command such a sum for tenant-right as the town-parks round these towns?—I can only answer that question in this way. I will illustrate it: Suppose a tenant has a town-park, and that he is paying 4*l.* or 5*l.* an acre for it, and that he comes into court with it, we value it, and say it is worth 4*l.* or 5*l.* per acre. If the landlord then wants to get a portion of it after 12 months or

Mr. *Brodrick*—continued.

two years, I should give him that; but I would value it in the same way. The tenant's interest in it at a rent of 5*l.* per acre would necessarily be very small.

8797. Would you establish a different system; would you say that the Sub-Commissioners should be allowed to fix a rent on town-parks, but that there should be no power of sale, by one tenant to another, of his interest in the same?—I should let them sell, certainly. Why should not they sell? But that would not prevent the landlord coming in as against the purchaser to take up a piece of it for building purposes.

8798. On what ground do you ask that the landlord should have to buy back his own land for building purposes?—He has to do it at present.

8799. As I understand, you suggest to the Committee that the landlord should have taken out of his hands land left in the town which he prefers to let year by year, that that land should be put into the hands of any butcher or anybody in the town who desires accommodation, and that then, if for the good of the town it is desirable to erect any buildings or anything else, the landlord is to have a *bonâ fide* tenant-right fixed against him on that land, which he declined to part with on account of establishing a tenant-right?—In the case I put he would have very little to pay; if the tenant is paying him 5*l.* an acre he is paying the full value, and the tenant would have very little interest to be paid for.

8800. I think we must go upon the principle of the thing. The question is: Is not the principle that the landlord should have to buy back the land for the purpose of the good of the community; you are not taking the interest of the community against the landlord, are you; you are taking the interest of the tenant against the rest of the community?—No.

8801. That is what I put to you: Is it not the case that the interest of the one man who is to get it is to go against the interest of the rest of the community?—I do not see that. If you gave the landlord power to take up the land at any time for any purpose that tends to the improvement of the town, I do not see how you can prejudice him, particularly if the tenant is paying a full rent for it; he cannot expect to get very much for it. The landlord has the larger interest in it.

8802. Is it not obvious that the landlord can afford to let the town have it on better terms if he has not got to pay first for getting it back than if he has to do so?—But my experience is that the landlord does not do it, even for the improvement of the town.

Mr. *Sexton.*

8803. He would get as much as he could, anyhow, for it, I suppose, do not you think so; he would take as much as he could get for it, in any case?—Naturally, yes.

Mr. *Brodrick.*

8804. In connection with this I should rather like to ask you another question: In answer to Question 8042 you said you thought the Sub-Commissioners' decision should be final?—On questions of value.

Mr. *Brodrick*—continued.

8805. Now, has it not come under your notice that Sub-Commissioners differ a good deal in their decisions?—They have; but the percentage of alteration by the Chief Commission of the rents of the Sub-Commissions has not been very great, if you take them as a whole.

8806. Are you aware that we have had it in evidence before this Committee that different lots of Sub-Commissioners have fixed very different rents on the same class of land?—From what I have heard, I do not think that prevails to any great extent now.

8807. You have not come across any such cases?—No, not much.

8808. Do not you think the question of reference to higher authority on the system of valuing has had something to do with the uniformity of decisions, or has assisted in that way?—I do not think so. I have always held this, that the Sub-Commission have better opportunities of judging of the value of a holding than the Appeal Court. The Appeal Court are guided entirely by a valuer sent down *ex parte* behind the back of everybody who makes his valuation; of course he has the reports of the other Sub-Commissioners before him.

8809. Do you consider that the greater difficulty lies in the question of the value of land, or in the question of what improvements should be allowed for?—Well, I think more in the question of what improvements should be allowed for. Most Commissioners that I have come across are very competent men; they know fairly what the value of the land is.

8810. Have you not found in some cases where the lay Commissioners have failed, that you have great difficulty in regard to fixing the improvements, the value?—Not where they are proved in court; there has not been so much difficulty.

8811. Do you remember the case of McClelland *v.* Charlemont, which you heard, acreage 21 acres, old rent 21*l.* 18*s.* 6*d.*, in which the tenant claimed improvements to the extent of 646*l.*, where you allowed him 150*l.* as the amount proved?—I think that is very probable. I do not recollect the case, but I am quite sure that is not an uncommon case.

8812. Have not you often found very large sums claimed?—Very large sums.

8813. And you have had to cut them down?—Certainly.

8814. Do not you think that in this case the values would be very difficult for a Sub-Commission to decide?—No, they are not. They know perfectly well what drains should cost a perch, and what it should cost to drain an acre of land, and they do not take the tenant's figures in all these cases.

8815. Do you find it easy to decide questions of deterioration now?—Yes; I have had some cases where my colleagues have reported to me that the land has been deteriorated, and I have invariably made the tenant pay for that if he has done it carelessly or deliberately.

8816. Would the view of the colleagues who have sat with you as a rule be that the tenant should

Mr. *Brodrick*—continued.

should not profit by his own deterioration?—Certainly, every one of them.

8817. But is it easy to establish that?—That is when it has been reported to me, "This land was capable of doing a great deal better than what it has been doing, and this tenant is not in a good way, he is not thriving; he is not working his land as he should do; he has allowed it to become deteriorated."

8818. If you came to the West of Ireland, how would you deal with questions of this kind: a man who had been allowed a certain amount, say 100*l.*, for improvements for drainage, the case we will say was heard six years ago; he comes in again at the end of the next judicial term, either a longer one or the shorter one which you propose; he claims another 100*l.* for drainage, he says he has made more drains in the interval, would you allow him another 5 per cent. off the rent of that?—I do not know, that case has not arisen yet; and it is almost analogous to the case that Mr. Sexton put to me as to when a man would be repaid for his existing drainage, how many years would it take him to be repaid in the new judicial term, and I really could not answer him; I do not know how it would be dealt with.

8819. Supposing the whole lot of drainage is worn out and he puts drainage in again, how would you treat it; would you allow him off his rent only for the first drainage, or would you allow him a second 5*l.*, or whatever it was?—I should prefer to wait for that case to arise; I do not like to answer a question of that kind without consideration and unless I had the facts before me; it is speculating very much upon what may take place.

8820. Without speculating over much, supposing you found that the land was in rather a worse condition than it was before, and yet that the tenant proved he had spent another 100*l.*, how would you deal with it?—I must ask you not to press that question upon me, for I do not know how I would deal with it at present.

8821. You would not give him the benefit of the fact that the land had gone down a bit, and that you found it looking worse, and fix the rent lower?—It would be really for experts (valuers) to say whether that had been the result of his neglect or whether the drains had worn out; there might be many circumstances which would cause it to be in that state.

8822. You want to decrease the judicial term; would not that lead to a good deal of litigation?—I do not think so.

8823. Do you think the tenant would not come in again every seven years?—If they found that prices had gone down, and things were going against them, they might, and I am sure they would come in; on the other hand they might be satisfied with the rent and not come. I would afford them the opportunity of doing so.

8824. Suppose the prices had gone up (which is quite possible at the rate they are tending), what do you think the landlords would do?—Then the landlords would come in.

Mr. *Brodrick*—continued.

8825. Do you think they would come in?—I think it is very likely.

8826. Do you think they would get anything by it?—I cannot see the justice of preventing them from getting something by it.

8827. As a matter of fact, in your experience, how many rents have you raised?—I have raised a great many.

8828. In what county?—In Antrim. I have raised rents very considerably on Baron Trevor's estate. It is popularly known as Island Magee, in the County of Antrim.

8829. You have spoken of certain rents being raised on estates which were sold in the Incumbered Estates Court?—Yes.

8830. Was it not proved when these were put up for sale by auction in the Incumbered Estates Court, it was stated as part of the inducement to purchase, that the rents were low and capable of being raised?—It was. It was quite a common thing to state on the face of the rentals that the tenants held under leases which would shortly expire, when the rents could be considerably raised; or that the holdings were held at low rents which the purchaser could advance. That was a common statement on those rentals.

8831. Had you any reason to think that there was special hardship in cases of estates sold under the Incumbered Estates Court?—I had; I think it was purchasers in the Incumbered Estates Court who raised the rents most in the North of Ireland, in my experienee.

8832. Do you think that the very high tenant-right some of them paid was an inducement to raise the rents?—I dare say the landlord, when he found that a man was getting 500*l.* for his tenant-right interest, thought he might put on some more rent.

8833. What is your view; you have not fixed many rents outside Ulster, have you?—No.

8834. You have generally worked in Ulster?—Generally. They are just the ordinary class of rents in the West of Ireland, nothing special.

8835. What is your view about fixing a specified value by the Sub-Commissioners?—That is a thing that I think should be abolished. I think the tenant should be entitled to sell for whatever he could get for his holding in any part of Ireland; and I think the fixing of specified value in the West of Ireland deters many tenants from making improvements; they know they cannot get any more for the holding than what the court has fixed. I think it is bad policy.

8836. You think the tenant should have the full value of his competition tenant-right?—I do.

8837. You do not think the landlord should have the full value of his rent as a competition rent?—I do not understand.

8838. You decline to give to the landlord a competition rent; you give him a rent called "fair rent"?—Yes; and I think the tenant is entitled to get the full competition value that he can get for his holding upon that fair rent, what he can sell it for.

8839. But you do not think these extravagant sums that are given for tenant-right, where there are no improvements proved which justify them,

Mr. *Brodrick*—continued.

are in any way a burden on the land?—Well, there are very few cases in which there are "extravagant" sums given for tenant-right in Ulster where there is not some substantial improvement and good buildings.

8840. You told me just now you have not served in the south?—No.

8841. Would you be astonished to hear of a case where a man had sold his farm for 15 years' purchase without making any improvement upon it?—I am very glad to hear it.

8842. You see 15 years' purchase was the value of a judicial term. I want to bring you to this: Is there any injustice to the country generally in fixing a fair rent first, and then allowing the incoming tenant an unlimited tenant-right to pay? What was the object of fixing a fair rent?—On some of the best managed estates in Ulster the tenant-right is unlimited. On the Marquis of Downshire's estate the tenant-right is unlimited. I have found cases where land subject to 30*s.* a statute acre was sold for 57*l.* 10*s.*, the tenant-right.

Mr. *T. W. Russell.*

8843. Fifty-seven pounds, ten shillings an acre?—£57 10*s.* an acre.

Mr. *Sexton.*

8844. Is not that 38 years' purchase of the rent?—About. I have known such cases when I was practising my profession on Lord Clanwilliam's estate. The better managed the estate and the better the character of the landlord, the higher the tenant-right sells for.

Mr. *Brodrick.*

8845. You think the land should not be well "salted" with rent, but that it may be well "salted" with tenant-right. That is your view?—It does not affect the landlord. If I were a landlord and found a tenant of mine selling land at 40*l.* an acre, I would be very glad he should do so, because I have got all that 40*l.* between myself and any loss of rent; I can sell his interest if he will not pay me.

8846. On what principle do you go yourself in fixing the specified value?—I have scarcely ever fixed a case of specified value. I have had two or three cases in Ulster, but I refused to fix the value because the Ulster tenant-right was proved, and there was an end to it; and I had two or three small cases of 50*l.* or 60*l.* in the west.

8847. When you originally fixed rent, did you have to make any return of the increases of rent which had been proved to have been made previously to the hearing?—No.

8848. Was not that customary?—Not for some years. It was only when this pink form was introduced that we had to return the variations of rent. Prior to that we had no such return to make.

8849. Do you think it is useless having that on record?—Not at all; I think it is a very good thing and gives desirable information.

Mr. *Brodrick*—continued.

8850. Do not you think that might with advantage be continued?—Certainly.

8851. In order that it might be seen how long the rent had so stood?—Certainly.

8852. As a matter of fact in the cases which came before you, did you find that the great majority of them had had their rents increased?—The great majority had had their rents increased, but a great many of them have had their rents reduced since 1881.

8853. When you are fixing fair rent does it influence you at all what allowance has been made by the landlord in the way of reduction during bad years?—That is temporary abatements?

8854. Yes?—Well, it does not influence me in the slightest.

8855. I want to ask you one more question about Robb *v.* Downshire: Are you quite clear that the improvements which you mentioned on the paper were improvements made by Mr. Weir. My point was whether Mr. Weir could sell, and was selling, improvements?—Yes.

8856. Are you quite clear that these were not made by Mr. Robb, subsequent to the time he bought the tenancy?—I could not answer that question.

8857. Would you mind looking and refreshing your memory?—Yes.

8858. It is rather important; it is rather material?—I see Mr. Justice Bewley, in his judgment, says that Mr. Robb came into possession, and he had to spend a good deal on improvements on the dwelling-house, many of which were of an ornamental nature. That does not refer to drainage, which, I take it, was done by Weir.

8859. Do you consider that was proved before you?—I do not think Robb proved anything except that he improved the house. I had a very strong opinion about that case. I thought it was a line-ball case. I had almost come to the conclusion that it was a residential holding, and I said, "In any case, although I have doubts about it, I will confirm this rent."

Mr. *Macartney.*

8860. You never saw the holding?—I never saw the holding.

Mr. *M'Cartan.*

8861. It was leased as an agricultural holding, was it not?—It was leased as an agricultural holding; that is what concluded my opinion about it; but Mr. Connor had used it as residential, and Mr. Robb used it as an agricultural holding for agricultural purposes.

Mr. *Macartney.*

8862. Do you happen to know any of the residential places near Lisburn?—I do.

8863. I do not know whether it has come judicially before you, but as a matter of fact all residential places on the Wallace Estate have always been held technically as farms?—They have. I recollect a very large case particularly of Mr. Richardson's; in that case I fixed a rent upon it.

8864. There

Mr. *Macartney*—continued.

8864. There was another case adjoining, a well-known place, where a Mr. W. B. Lyons had had his rent fixed?—Yes.

8865. The place was bought by Mr. Lyons as a demesne, was it not?—I cannot say.

Mr. *Brodrick.*

8866. You would hardly contend, would you, that the Land Act was intended to apply to residential estates held by large manufacturers in the City of Belfast?—No, I would not; and I would not fix the rent if it were not that the lease was an ordinary agricultural lease; I was dealing with that. Different decisions go to this, that it does not matter what the status of the tenant may be (he may be a solicitor, a doctor, or a clergyman), if it is really an agricultural holding and has been used and let as an agricultural holding.

Mr. *Brodrick*—continued.

8867. You are bound to put it as such?—I am bound to put it as such.

8868. It is similar to some cases that we have heard of at Wimbledon, I dare say?—I have not fixed any rents at Wimbledon.

Mr. *Sexton.*

8869. Mr. Brodrick suggested that the landlord might have the option, in the case of a subletting, of taking over the sub-tenant and receiving the rent from him; is it not the case that the tenant has often spent a considerable sum in buildings and other improvements on the holding of the sub-tenant?—Well, sometimes; not very much on these cottier holdings; he simply keeps them in repair.

8870. Where that has happened, it would be unjust, would it not, to pass on the sub-tenant from the tenant to the landlord?—Yes.

Tuesday, 10*th July* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Macartney.	The Solicitor General.
Mr. M'Cartan.	Mr. Sexton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. JAMES JOHNSTON SHAW, called in; and Examined.

Mr. *Sexton.*

8871. I BELIEVE you are a County Court Judge in Kerry?—Yes, since January 1892.

8872. Had you any previous experience of adjudication upon the Land Acts?—No, except as a barrister in court. I had considerable practice on the North East Circuit, and had considerable experience of land cases as a barrister.

8873. Over what period did your practice extend?—From the Land Act, 1881, up to the time I was appointed county court judge; but principally while I was at the Junior Bar; after I was called to the Inner Bar I had fewer land cases.

8874. Then you had a professional experience extending over the whole period before your judicial experience?—Yes.

8875. You have, I apprehend, to take the law from the Land Commission, unless when it is declared by the Court of Appeal?—A decision of the Land Commission upon an appeal is of course a decision of a higher court for land cases than the county court, and unless that is overruled by the Court of Appeal the county court judge would feel himself bound by it.

8876. That is the law upon any question pertaining to these Acts, as declared by the Land Commission, binds you, unless overruled by the Court of Appeal?—Certainly.

8877. Now, I wish to ask you what facility or what means you have for discovering what the law is at any moment either as laid down by the Court of Appeal or by the Land Commission?—I have no facility whatever, except from reading the Law Reports, and of course a former member of the Bar has also opportunities of finding out cases that are not reported; decisions that are talked about in the library amongst barristers, and that sometimes do not find their way into the Reports at all; but otherwise I have no means of discovering what the decisions are except from reading the Law Reports.

8878. But an account of the effect of a legal decision given in conversation even by a clever barrister might be infirm?—I would not depend upon it at all, nor would I feel myself bound by it in any way except to this extent, that if I heard on good authority that a particular point had been decided in the Court of Appeal or in the Land Commission Court, it would weigh very much with me in coming to a decision of my own on a similar point.

Mr. *Sexton*—continued.

8879. It seems rather a loose way, though, of determining important questions of law?—But that is the way in which all legal matters are decided. I have no other means of finding out decisions upon points of equity or decisions upon the common law which are the main part of my work. The decisions upon land cases are a very subordinate part of my work; indeed, they do not occupy me more than a day or two at any particular sessions.

8880. That may be a subordinate part of your work, but is there anything more important to the people of Ireland as a whole than a correct administration of the laws relating to fair rent and free sale?—Perhaps I am prejudiced, but I think the administration of the ordinary law of contract and of tort is quite as important as the administration of the law in relation to the land.

8881. Of course a correct administration of the law in relation to the land governs what, determines you may say, the yearly income of the bulk of the people; the yearly surplus after the payment of rent?—Oh yes, as far as it affects the pecuniary condition of the people, it is certainly of more importance.

8882. I understand that as regards the Court of Appeal there is a tolerable certainty that any important land case will be reported by the Council of Law Reporting in their publication?—Yes, I think so.

8883. But with regard to the Land Commission?—I think all the important decisions of the Land Commission are reported either in the Law Reports, or in the "Irish Law Times" Reports.

8884. I understand that only a small proportion of them is found in the Law Reports?—I am not able to say that myself, but I see from time to time a considerable number of cases reported from the Land Commission Courts, and I have

Mr. *Sexton*—continued.

I have always assumed that every important decision found its way into the Reports somewhere or other.

8885. So that in case important decisions did not that would be a material fact?—Oh, a very important decision might be made without my knowing anything about it, and of course I would not know whether it was reported or not.

8886. It depends chiefly, I think, on the Land Commission, and on the discretion of the editor of the "Irish Law Times"?—I think the editor of the "Irish Law Times" would insert a report of any important case. There is a very great eagerness on the part of the editor of the "Irish Law Times," I know, to get hold of any case that is of importance to the profession, particularly if it is a case that has not been reported, or is not likely to be reported in the authorised reports, and I should think it extremely unlikely that any decision of any great importance would be given in the Land Commission Court that would not be reported.

8887. We have heard of some cases of importance not reported?—That may be. I do not say that it may not be so, but from my own experience I would say, *à priori*, that it is extremely unlikely that it would be so.

8888. Do you think it would be advisable that Parliament should make some provision for the more responsible reporting of the decisions; at any rate, of the Land Commission, and communicating them to the subordinate judges, to the county court judges, and to the Sub-Commissions?—Well, I really do not know; I think a great many of the decisions, both of county court judges and Land Commission Courts are not worth reporting.

8889. But those that are material, there must be at present some possibility that material cases may escape reporting?—Hitherto the whole law on the most important points has been in the same condition; there is no statutory or parliamentary provision for the reporting of any cases; it is entirely a matter for the profession, and for those who cater for the profession.

8890. The litigants, you know, have some interest also as well as the profession?—Oh, undoubtedly.

8891. And the fact that a defective condition of reporting generally prevails would be no reason for not applying the system in regard to the land law if we saw our way to do it?—I do not think, as a matter of fact, that the system of reporting is defective; on the contrary, I think there is too much reporting. I complain, and a great many others complain, that the Law Reports are full of rubbish, decisions that decide nothing and cases that decide points that have been decided a hundred times over, are reported over and over again; and the multitude of the reports is becoming an intolerable burden to everybody.

8892. Of course you know that the reporting of "rubbish" does not touch the question of possible non-reporting of material cases?—What I have to say upon that is this: that I have not known myself of any important decision of the Land Commission that was not reported. There

Mr. *Sexton*—continued.

may be such cases; I do not at all say that there may not be such cases, but I have not myself had any personal knowledge of it, and, from what I know of the system of law reporting, I would think it extremely unlikely that it should be so.

8893. I am told by high authority that in England they sometimes report decisions on matters of fact, and omit decisions on matters of law?—Well, that is very bad reporting; that is all that I can say.

8894. I should be glad if you, as a legal man, as a judicial person, could assist the Committee to understand to what extent the land jurisdiction of the Land Commission and of the subordinate courts is liable to be over-ridden by the superior courts; it has been put here as a question of the impregnability of a fair rent order?—Well, my idea always was that where the Land Commission Court or the county court had jurisdiction to fix a fair rent, that that fair rent as between the parties to that decision was binding and conclusive; if, of course, the Land Commission Court or the county court fix a fair rent in a case in which, either because the relation of landlord and tenant does not really exist between the parties at all, or for some other reason that would oust the jurisdiction of the court, the fixing of the fair rent is a nullity.

8895. We have it in evidence that after a rent has been fixed and a statutory term initiated, that any common law court may take up and deal with the question whether the tenant was a present tenant or a tenant at the time when the rent was fixed, or whether the holding was one to which the Act applied?—Yes; suppose for example that a fair rent is fixed as between a landlord and tenant, I mean the landlord and tenant who appear upon the face of the originating notice, and it turns out afterwards that the true owner of the land is not there at all, and that the tenant is not his tenant, the true owner of the land, of course, may bring an ejectment and put the tenant out, notwithstanding the fixing of the fair rent. I do not see how that could be otherwise because it would be impossible to give the Sub-Commission Court, or any other court fixing a fair rent, a jurisdiction to take away one man's property from him and give it to another.

8896. Does it not rather do something more; does it not declare that the decision of the Land Commission upon these questions, namely, whether the tenant is a present tenant, or whether the holding is a holding to which the Act applies, is liable to be overturned by a court of common law?—That question is not the one that I was adverting to. If the relation of landlord and tenant exist, that is to say if there is a contract of tenancy, an actual subsisting contract of tenancy between the parties, then I think it is within the jurisdiction of the court (certainly it is within the jurisdiction of the court) to decide whether that tenancy is a present tenancy or is not a present tenancy. Of course, if there is no relation of landlord and tenant at all, no decision of the Sub-Commission Court upon the question would bind the

Mr. *Sexton*—continued.

man who came in by title paramount to that of both parties.

8897. Any question upon which the action for ejectment can be brought by a landlerd may be raised after a fair rent has been fixed?—Oh, I think not. I think in practically (at least I would say) 999 cases out of every 1,000 a fair rent is conclusive between the parties; in the thousandth case, perhaps, there may be some question as to whether the court acted within its jurisdiction or not, and that question may be tried upon an ejectment; but in my experience it is a very rare case indeed when the question is raised afterwards.

8898. You have heard of a case of a limited owner?—Oh, yes; that is a case that is common to all properties.

Mr. *T. W. Russell.*

8899. That is the case of defective title, is it not?—Yes. It required the settled Land Act to enable a tenant for life to give a lease to anybody extending beyond the term of his own life, or that might extend beyond the term of his own life; and all that, as far as I know, has ever been decided in that matter is that the ordinary law applies, that a tenant for life who has only a limited interest cannot bind his successor or the remainderman. That may be, of course, a great hardship to him, and sometimes is a hardship, but it is not a greater hardship in relation to landlord and tenant than it is in many other cases.

Mr. *Sexton.*

8900. But at any rate the statutory tenant with his fair rent has no greater security, I imagine, against disturbance upon grounds of law than if the statutory term had not been created?—Well, the statutory tenant with his fair rent fixed is in this position, that as long as he pays his rent and fulfils the statutory covenants his landlord cannot possibly touch him.

8901. His landlord you say?—His landlord cannot possibly eject him. Of course if he has got the fair rent fixed as against somebody who is not his landlord at all, or against some man who is not the owner of the land at all, I really do not see how that can be prevented, the paramount owner comes in and takes his rights.

8902. That is to say, because of the legal relations existing between the landlord, let us call him, and any other persons of which the tenant was not aware, the statutory term might be broken?—I think so. Of course it is right to say that under the Settled Land Act where the tenant for life has a power to give an agricultural lease, the statutory lease or the lease given by the tenant for life under the powers of the settlement would be good against the remainderman.

8903. Would be indefeasible?—Well, as long as it lasted; but that is a creation of the statute.

8904. Suppose the question of whether the holding was one to which the Act applied was a question from which a question of law could be evolved, as it often can, it is not a pure question of fact, would it not be open to the landlord there, even though the statutory term had begun, to raise the question in a common law court?—I think not; I think if the relation of landlord and tenant existed the landlord would as a party to the matter be bound.

8905. Would any other person be damnified in that respect?—The ordinary rule of law is that no man is bound by the decision of a court if he is not a party to the suit.

8906. Would you say conversely that a man who is a party to the suit is bound?—I think so; if a man is a landlord, and he has got a tenant, if he does not raise the question in the Commission Court, whether the tenant is a present tenant or not, if he allows the rent to be fixed against himself by the tenant as a present tenant, and does not appeal, allows the time to appeal to elapse, I do not think any court would ever allow him to raise the question in any other form as to whether the tenant was a present tenant or not; I think it would be held to be an estoppel upon him.

8907. The sum of it appears to be that any other person than the landlord who can raise a legal question either as to the status of the tenant or the application of the Act to the holding, may raise it successfully in the common law court after the statutory term has begun?—I think so.

8908. Can you tell the Committee this; have you any idea whether future tenancies have been created in any large numbers since the passing of the Act of 1881?—Chiefly in the case of evicted tenants. I have had a considerable number of cases of future tenancies in Kerry, where the tenant had been evicted, and where the tenancy was gone, and where the landlord had afterwards admitted the tenant, and admitted him as a future tenant. I suppose the Committee are aware that it is perfectly open to the landlord to reinstate an evicted tenant whose tenancy has expired as a present tenant.

8909. Yes?—And if they then agree to fix a fair rent that fixing of a fair rent is just the same as if it were a rent fixed by the court; that is to say, it lasts for 15 years.

Mr. *T. W. Russell.*

8910. Under what Act is that?—Under the Act of 1881.

Mr. *Sexton.*

8911. Does he often exercise that option to your knowledge?—I have known it done.

8912. Not frequently; or would you say frequently?—I have known a considerable number of cases in Kerry. I may say that my experience is that the landlords in Kerry (of course there are exceptions to every rule, but I mean as regards the bulk of them) are not anxious to press legal points as against their tenants.

8913. They are not anxious to destroy present tenancies?—No. I have had cases myself where a future tenancy was clearly proved and the landlord

Mr. *Sexton*—continued.

landlord was anxious to waive the question and to allow a fair rent to be fixed. I said that I could not do it because I had no jurisdiction to fix a fair rent on a "future" tenancy; I might as well proceed to fix a fair rent upon a shopkeeper in the town of Tralee.

8914. Could they in that case by mutual arrangement set up a present tenancy again?—Under the section I referred to the landlord may reinstate the tenant as a present tenant if he chooses.

8915. But in order to make him a present tenant he would have to evict him first, would he?—I think not.

8916. Suppose he was a future tenant?—I think by contract with him he might say, "I hereby agree that you shall hereafter as against me have the status of a present tenant." I think it could be done quite easily.

8917. Will you tell us what is the position of a future tenant before the law in regard to security of tenure and fair rent, he cannot have the fair rent fixed?—He cannot have the fair rent fixed; but if the landlord demands an increase of rent, I believe he can come in then. I have not had any experience myself of future tenancies except in the way of the question being raised as against the fixing of the fair rent, and the question of the status of a future tenant is rather an obscure one as far as I can make out, and I really would not like to go into the question, because I have not sufficiently considered it.

8918. I think you will find that if a future tenant accepts an increase of rent above what it was at the beginning of his tenancy he cannot come in, but he acquires a statutory term subject to the ordinary conditions?—Yes; I believe that is so.

8919. Can you tell us what is his position at the end of that statutory term, because the Act is not clear; what happens to him at the end of that statutory term, acquired in that way?—I could not give you an answer to that question at all; I have not considered it, and I would not like to give an answer upon a legal question that I have not considered it.

8920. His position appears to be very uncertain after the first statutory term?—I am perfectly aware that the status of the future tenant is very obscure under the Act, but I must say that I have not sufficiently considered it, and I have not the statute sufficiently in my mind at the present moment that I would like to commit myself to a legal point upon it.

8921. You have assented, I think, to a suggestion I made upon the Act?—Yes, when you mentioned it, I remembered about that.

8922. If you found that these future tenants had been created in any considerable number, shut off as they are from the fair rent provisions, and shut off also from the security of the statutory term, and looking to the fact that 300,000 statutory terms have been created, would you think it advisable to consider whether present tenancies might not be set up; would you leave the tenants in the position of future tenants?—That is a point upon which I really could not give an opinion.

Mr. *Sexton*—continued.

8923. You have not considered it?—I have not considered the question, and it is a question of policy more than a question of law, and I really have not any very definite views upon the question of policy at all. I think the idea of the Act was to secure all existing interests in the land, but that as regards tenancies that were created after a certain date, freedom of contract was to prevail as much as possible.

8924. The absence of freedom of contract was what led to the passing of the Act, that is to say the absence of practical freedom of contract was what led to the passing of the Act?—I understand the basis of the whole Land Act of 1881 was that the tenant was not in a position to contract freely.

8925. Yes?—That in my opinion was the only justification for the Act at all.

8926. That, of course, would be an ample justification, would it not?—I cannot say that at all; as I understand, that is the fact.

8927. If, of the two parties in the country to the ordinary contract about the land, one is free and the other is not, of course that is a very good reason for interfering?—Yes, but the Land Act of 1881, as is very well known, has been applied to cases where one party is just as independent as the other.

8928. No doubt; they have incidentally acquired some benefit. Now, may I ask you whether your jurisdiction under the Acts is generally co-ordinate with that of the Sub-Commission?—Yes; the tenant in issuing his originating notice, or the landlord if he issues his originating notice, may issue it either in the county court or in the Land Commission Court.

8929. And as the Sub-Commissions are subject to rehearing by the Land Commission you are subject to appeal to them?—Oh, yes; exactly.

8930. Have you now many proceedings under the Act of 1870?—None at all; I have never had one.

8931. So far as you know the Act of 1881 has superseded the Act of 1870?—Entirely.

8932. Entirely?—The Act of 1870 never has been resorted to in my time in Kerry, and I should think, except in the North of Ireland occasionally, a case under the Act of 1870 is very rare now at all.

8933. Instead of applying to have compensation for improvements or for disturbance on quitting the holding the tenant now has a fair rent fixed, and when he wishes to quit the holding he sells the tenancy?—Yes.

8934. Although the Act of 1881 has entirely superseded the Act of 1870, you are bound, I understand, in administering the Act of 1881, especially in regard to improvements, to act under the checks and limitations of the Act of 1870?—Yes.

8935. In fact, in considering what allowance a tenant ought to have for improvements in his fair rent you are obliged, by the lenient arrangement of the two Acts, to regard him as if he were quitting the holding, and to fix the annual allowance upon the improvements you would give if he was quitting the holding?—Yes; that is, I understand so, but as a matter of fact we rarely go into the matter in that theoretical way. The court

Mr. *Sexton*—continued.

court valuer goes out and sees the tenant's improvements; he puts his value upon them, and says what he thinks ought to come off the rent in respect of them, and there is the whole of it. I do not go into any very elaborate or minute investigation as to the exact compensation that a tenant would be entitled to for improvements.

8936. Of course, you fall into a method of administering the law, but we, who have to consider the amendment of the law, must endeavor to discover on what principle your method is based?—Yes.

8937. Have you had occasion at all to fix what is called in the Act the specified value of a holding?—No, never.

8938. No application has come to you?—No application.

8939. Have you had at all to fix the true value?—No.

8940. But, of course, tenants must have quitted their holdings voluntarily I should say in Kerry as well as elsewhere?—I should say in almost every case they either sell or assign to a relative.

8941. Yes; there the sale comes in?—It never comes into court.

8942. Do I understand then that the landlords of Kerry, when the tenants wish to quit the holding, allow the tenant to sell, in the words of the Act, at the best price he can get for the tenancy?—Oh, yes; they do as a matter of fact.

8943. They do?—Yes. Of course they might object to an objectionable tenant. If a man proposed to sell to somebody who was a notorious ruffian, the landlord would naturally object; but if he gets a decent tenant he is only too glad to get him.

8944. "Notorious ruffians," you know, are not often in possession of the necessary capital to buy a farm?—They sometimes are.

8945. The tenant then, in Kerry at any rate, is ordinarily at liberty to sell his tenancy for the best price he can get?—That is my experience; in fact the landlords in Kerry, and indeed I think I may say elsewhere, are extremely glad to get any man that has got money to come in and take a farm from them.

8946. But they do not seem to do, as landlords according to the evidence before us do elsewhere, they do not insist on buying the tenancy at a price which turns out to be much lower than the tenant could obtain in the market?—There is hardly a landlord in Kerry able ever to buy any tenancy. Most of them have quite enough to do to keep soul and body together: that is my experience.

8947. But outside Kerry, at any rate, they are allowed, I understand, to speculate to this extent, that they can buy the tenancy for a much smaller sum than it is worth in the market, and then sell it in the market?—I have never known any instance of that at all; it has not come within my experience.

8948. And your judicial experience does not suggest to you any objection to allowing a tenant to sell in that way?—I think freedom of sale is undoubtedly a great benefit, undoubtedly.

8949. You think freedom of sale is?—Yes, and I would not put any limit at all upon the tenant's freedom of selling his interest in his holding, except that I would give the landlord the right to object on good grounds to the assignee.

Mr. *Sexton*—continued.

8950. Oh, certainly; but we were on the right of sale?—Subject to that, I think the policy of the law ought to be that the tenant should have the utmost freedom of sale.

8951. Have you had any case before you where the landlord was able successfully to object to a sale, or to prevent the fixing of the fair rent upon the ground that the improvements had been made and maintained by him or his predecessors?—No.

8952. No such case?—No such case.

8953. Now about the County Kerry; would you call it a tillage county?—Oh, no; it is mainly pastoral; except in North Kerry, there is very little tillage; in North Kerry there is considerable tillage.

8954. Take North Kerry, I know that best; there is a good deal there?—Yes; but in the south and west of Kerry it is chiefly pasture, and of a very poor kind, mountain pasture; it will not fatten cattle.

8955. There is a vast deal of poor land there?—Yes; it is chiefly used for rearing "stores," calves brought up to a certain age on mountain pasture, then sold to better pastures for fattening; but I am not an agricultural expert, nor a pastoral expert, either; I am only telling you the result of the merest general observation.

8956. Has your judicial experience shown you that the improvements in Kerry, as well as elsewhere, have been made by the tenants?—Oh, chiefly. In some cases the improvements have been very largely made by the landlord; but that is a rare case. I know one case in particular where the landlord for a long time held a very considerable town land in his own hand, and farmed it very highly, and then let it out to tenants in the improved condition. He complains very much that the Land Commission, in fixing his tenants' rents, did not allow him sufficient for his improvements.

Mr. *T. W. Russell.*

8957. That is a rare case?—Of course it is a rare case. I know that particular case.

Mr. *Sexton.*

8958. In the poor parts of the county I should say there has been a good deal of reclamation in Kerry?—Oh, yes. In driving round all the south and west coasts it is perfectly marvellous to see the quantities of stones taken out of the land.

8959. And in the tillage there has been a good deal of complaint by the tenants?—Yes; but very often in dealing with cases on estates the landlord makes advances for timber and slate.

8960. He contributes to the building?—He contributes to the building; yes. Of course there is great difference in the estates.

8961. I notice that you had last year a great part of the fair rent business, you yourself; you have had one-third of all the cases heard in the county

Mr. *Sexton*—continued.

county courts. You have had half the acreage and a third of the rents to deal with. In seven courts there was no business at all; in 12 other courts the cases were less than 10?—There is a temporary reason for that I think; the tenants on the Kenmare Estate, which is, as you know, a very large estate in the neighbourhood of Killarney, nearly all came in for the first time in the year 1893, the end of 1892 or the beginning of 1893. I never could quite understand what the reason of it was. The rents were all raised about 1878. That was the evidence that came out before me in the court, in 1878 there was a very general rise of rents all over the Kenmore Estate. When the Land Act of 1881 came into operation one would have thought that the tenants would have immediately taken advantage of it, and come into court to get the rents reduced; but as a matter of fact they waited 12 years, the great bulk of them did not come in until the year 1893.

Mr. *T. W. Russell.*

8962. But they got temporary abatements, I suppose?—Yes, I suppose in some cases they did.

Mr. *Sexton.*

8963. We have evidence that the tenants are kept out of court by various circumstances; arrears?—Oh, the arrears, of course, are a very large element.

8964. The fear of the cost of an appeal?—Well, I am not sure that that would operate, I have never known a Kerry man deterred by law costs on any matter. I know they spend any amount of money in the county court, and on appeals from the county court.

8965. Just as the Kerry landlord does not buy the tenancy because he has not got the money, so the Kerry tenant might be afraid of an appeal if he had not the money to pay for it?—I do not think the fear of an appeal really weighs very much with them; I would not say that it does. I think that probably it is more that they are content to rub along with the temporary abatements that they get, and also probably that they are weighted with arrears, and they are afraid to come into court lest there should be an ejectment for non-payment of rent, or something of that sort.

8966. In cases where bog has been reclaimed, where the title to it is questioned, or questions of turbary, commonage, or seaweed arise, do you think they may fear to be deprived of their rights?—I do not know; I have had very few cases in my experience where the tenants were deprived of their rights of turbary. As a general rule where the tenant has had the use of turbary the landlord, before the fair rent is fixed, if there is no legal obligation upon him to continue it, is asked: Will he continue it; does he give an engagement to continue it, and he generally does, otherwise the rent is reduced by so much.

8967. Do you think it would facilitate the working of the Acts if the court had power to deal with such questions as rights of turbary, seaweed, and sand existing on the estate, and to measure their value in the fair rent?—As a matter of fact the court does measure their value in the fair rent.

Mr. *Sexton*—continued.

8968. Where they exist on the holding?—I mean where they exist as appurtenances to the holding, and are part and parcel of the holding; then, as a matter of course, the turbary is taken into consideration in fixing the rent. Where it is not an appurtenance to the holding, but a mere permissive right that they have got from the landlord, and which he can withdraw at any time, then as a general rule the landlord is asked: "Do you agree to continue to allow the tenant to take the turbary as he has been accustomed to do." If he does, that is recorded upon the face of the fair rent agreement, and it is upon that basis that the rent is fixed. If, on the contrary, he says: "No, I will not agree" or "I want to be able to keep the matter in my own hands," then the rent is reduced by so much as the value of the turbary that is taken away represents.

8969. But where the turbary is not part and parcel of the holding or any other right of the kind, do you think it would facilitate the working of the Acts, if the material of such right existing on the estate of the landlord, the court had power to take it into consideration, and to make the continuing of that right an element in the amount of the fair rent?—Well, you see, that would be giving the court a power to take away from the landlord rights that he possibly values very highly.

8970. To take these things at their value?—That is a matter, not of law, but of policy, that I do not feel myself equal to giving an opinion upon.

8971. It is on the same lines of policy as fixing a fair rent?—I am somewhat conservative in these matters of legal rights, and I shrink very much from having any power put into my hands to take away any man's property from him.

8972. Even at a fair price?—Yes, even at a fair price, unless he is willing to part with it.

8973. Then you would have shrank equally from that principle of the fair rent before the passing of the Act of 1881?—I do not think the question of fixing a fair rent can be defended at all except upon the basis that the tenant is not in a position to freely contract with his landlord; that he is at his landlord's mercy. Where the landlord and tenant are on equal terms, and on independent terms, I do not think the fixing of a fair rent can be defended at all upon any economic principles.

8974. Now will you describe the procedure before you in fixing a fair rent?—If a tenant wishes to come into the county court he serves his originating notice and names the county court as the court in which he wishes his case to be tried. He is then obliged, after serving the originating notice upon the landlord, to serve two copies upon the clerk of the peace of the county; the clerk of the peace retains one of those and files it, and sends the other to the Land Commission Court, where it is filed in the Land Commission Court. The clerk of the peace is bound to send every notice of motion affecting the

Mr. *Sexton*—continued.

the case, or in the case, to the Land Commission; a duplicate of each notice of motion must be served upon him, which he sends to the Land Commission Court; every order of every description that is made by a county court judge in relation to the matter is sent forward to the Land Commission Court; so that every step in the case is duplicated as it were; there is a record of it in the Land Commission Court, as well as in the county court, so that the Land Commission Court is kept in touch with the proceedings from the beginning to the end.

8975. On that I should like to interpose one question: It appears from the last report of the Land Commission that the total number of cases undisposed of was 5,891; in fact I think they state in their report that there are still 5,129 undisposed of; on examination it turned out there were only 214, and the difference is attributed to the fact that the clerks of the peace had not forwarded, as you say they are bound to do, copies of the orders of the county court in 4,900 cases?—I am bound to say I am very much surprised to hear that; I am quite sure that none of those cases relate to the County of Kerry; for I am quite sure the clerk of the peace in the County of Kerry does his business as efficiently as any man in Ireland.

8976. I think, unfortunately, that does relate to the County Kerry a good deal?—I will be very much surprised if it does. I think there must be some other explanation of it.

8977. In the case of County Kerry we have a return here showing that the number of applications undisposed of to the 31st of March last were only 29; the number recorded in the books of the Land Commission as undisposed of was 207, so that apparently the clerk of the peace failed to record the orders in the difference between the 29 and the 207 cases?—Or the Land Commission may have failed to record the clerk of the peace's returns. Either might be. I think the defect is quite as likely to be in the Land Commission Court office as in the clerk of the peace's office in Kerry; from my experience I would say quite as likely.

8978. We have had a letter from Mr. Justice Bewley to the Lord Chancellor, in which the Land Commission complain formally to the Lord Chancellor of the failure of clerks of the peace to forward copies of the orders?—I brought that circular under the notice of the clerk of the peace of Kerry, and I was satisfied beyond all manner of doubt that no blame attached to him in the matter.

8979. We shall have Judge Bewley here, and then we may get to the bottom of it; now will you proceed with your account of the fixing of fair rents?—As soon as the originating notices come in they are sent by the clerk of the peace to one or other of the two court valuers, who assist me in the county; the court valuer then sends in a request to the Land Commission for an Ordnance sheet embracing the holding; he then goes upon the lands, and he examines the land; he makes a very careful map, showing the boundaries of the holding; it is coloured in different ways, according to the various qualities of the soil, and

Mr. *Sexton*—continued.

he sends in a very elaborate report in the form that is given at the end of the rules for the court valuer's report, a very elaborate and a very minute report.

8980. Is it identical with the report sent in by the lay members of the Sub-Commission?—I do not know that, but I fancy it is in substance the same.

8981. Can we get the form in Cherry?—Yes, the form is in Cherry and Wakely. I think I can give you the reference to it. You will see the form on page 515 in Cherry and Wakely's book.

8982. Well, he sends in that report to you?—He sends in that report to the clerk of the peace.

8983. Does he keep a field book as the Sub-Commission does?—Yes.

8984. Does he send the field book?—No, he keeps the field book himself. All that is sent to me is the map and the form of report for that purpose.

8985. Does that occur before or after the hearing?—That is before the hearing in my county; it is a matter entirely for the county court judge; he has this matter entirely in his own hands, he is the sole judge of the court, the sole judge both of law and fact; and he has the sole direction of the procedure, except so far as it is bound by the rules; he can determine whether the court valuer shall go and see the holding before the hearing in court, or whether he shall go and see it after it. In my county the practice has been, and I adopted the practice, to send the county court valuer to the holding to examine the holding and to make his report before the hearing.

8986. Now may I ask you: Has he any general instructions from you, or do you issue instructions to him in any particular case?—No, he has no general instructions from me at all; but in each particular case, after the evidence is given in court, the court valuer and I have some conversation about the case: I ask him whether the evidence that he has heard in court differs in any material respect from what he heard when he was on the land. When he is on the land he hears the tenant's story; the tenant goes round with him, shows him the holding, and tells him his story; and sometimes a representative of the landlord is there, either the agent or some sub-agent, and he tells him the landlord's story. Sometimes the landlord does not send a representative at all. Then when the case is brought into court, and evidence is given there under cross-examination, I ask the court valuer: Has he heard anything now that he did not hear before, or that has altered his opinion of the case in any way. Very rarely indeed does anything that occurs in court alter the judgment that he has formed upon seeing the land. Occasionally he hears for the first time, perhaps, that the landlord has contributed a sum to the building of the house, or has helped the tenant in making drains, or something of that sort, but that very rarely happens.

8987. May I take it that your practice is to adopt the report of the valuer in regard to the amount

Mr. *Sexton*—continued.

amount of the fair rent?—I have no option in the matter. Of course I do not mean that I have no legal option, but I have no moral option but to adopt the report of the court valuer; he is the man who is appointed by the Government to assist me; he is the man who is supposed to stand independently as between the parties; he knows the land, and has seen the land; I know nothing about it, have never seen it, and I would know nothing about it if I did see it. The landlord's valuer values the land at a certain rate; the tenant's valuer values the land at a certain rate; I know that they are both partisan witnesses, and that here is a man who is appointed by the Government to stand equal between the parties, to stand impartial; he tells me that the value of the land is so much, and what option have I but to adopt his judgment. If I were to set aside his judgment, and say, "No, I will take something else as a basis," where would I get it?

8988. Of course I am only asking you what you do?—I am telling you this, because it is, to my mind, a very great hardship that any judge should be placed in that position, that he should be compelled to judge of a matter as to which he is blindfold, adopting the judgment of another man, signing it with his own name as his judgment, when it is not his judgment at all, and he knows nothing about it.

8989. Does that apply to county courts in general?—Well, it applies to every county court so far as I know. There is no county court judge that I know that professes to be an agricultural expert, or to value the land for himself.

Mr. *T. W. Russell.*

8990. Or whoever goes upon it?—Or whoever goes near it; how could he?

Mr. *Sexton.*

8991. As you say, the valuer's mind is rarely affected by what happens in court, then it comes to this, that the rent, as fixed by the county court judge, is the rent estimated by a valuer, who simply goes upon the holding before the evidence in the case is heard?—That is so; when he is going over the land he has all the facts of the case which are afterwards deposed to in evidence; he has heard them all, but not sworn to of course; he hears practically the same story in court, on oath, that he hears from the tenant on the ground; he hears practically the same story from the landlord or his representative if he is there, that he afterwards hears in court. It is very rare indeed that any new fact comes out in court which the valuer has not heard when he is upon the land, and of course it very seldom happens that anything occurs in court that actually affects the determination of the value of the land.

8992. It seems to indicate at any rate that the word of the tenant is as good as his oath; he does not deceive?—Oh, my experience is that if I stopped administering oaths altogether it would not make the slightest difference. The man in that case, and in every other case my experience

Mr. *Sexton*—continued.

is, comes up and tells the story that he intends to tell; whether he is sworn, or whether he is not, he tells the same story; and if the administering of oaths ceased in all the county courts of Ireland to-morrow, it would not make a particle of difference in the evidence that is given in the court. That is my experience.

8993. As the system works, does the valuer assume or find that the improvements have been made by the tenant; it is suggested that a very eminent jurist and judge in England was of opinion that the administration of an oath added nothing to the efficiency of judicial proceedings. You appear to think that in Kerry the unsworn evidence is just as good as the sworn?—Well, I do not confine it to Kerry, because my experience is that if the man is going to tell the truth, he will tell it whether he is sworn or not, and if he is going to tell a lie, he will tell it whether he is sworn or not. But of course that is a very much larger question than any question connected with land.

8994. Yes; but your evidence indicated, as I understood it, that as a matter of fact the narrative given upon the land without an oath to the valuer was found to be reliable when tested?—Yes, that is so. It is very rare, as I said before, that upon cross-examination by the landlord's representative anything comes out that materially affects the value of the land that has not been told the county court valuer before. Of course, as I have said before, there are cases; for example, it has often occurred, and does occur, that the landlord produces his book and says that the landlord advanced a hundred pounds twenty years ago to help to build the house; perhaps it is the tenant's son that is on the holding, and he does not know about that, or has never heard of it. That is a new fact in the case that comes out for the first time.

8995. You generally find that the valuer makes the valuation upon the assumption, I suppose, that the improvements had been made by the tenant?—Yes, as a general rule; any improvements that are made are made by the tenants in Kerry. I am speaking, of course, of Kerry alone; the reclamation of cut-out bog and the taking away of stones out of rough land is done by the tenant; of course there is draining occasionally; it is to the drainage chiefly that the landlord is found to have contributed, if he has contributed anything.

8996. Is that impression which he receives on the inspection of the holding, that the improvements have been made by the tenants, disturbed by the evidence afterwards in court?—Oh, no; as a general rule the landlord in Kerry rarely claims the improvements; he generally admits that any improvements that are there are the tenant's improvements. It is very rare indeed, as a matter of fact, that there is any contest about it, except about the building of a house or perhaps a loan that has been got for drainage; that is generally the only thing in the way of improvements that the landlord actually claims.

8997. And the tenant, I suppose, does not contest that?—Except as to the value of the improvements; he says the money was very badly laid out;

Mr. *Sexton*—continued.

he will say : "Begorra, if you spent 100*l.* on that drainage it would not be worth 50*l.*," or something of that sort.

8998. Rather a comment than anything else?—Yes, the facts are generally undisputed because the landlord has his books there, which show beyond all doubt.

8999. Then in Kerry apparently, under your jurisdiction, you are free from all this trouble about the complication as to presumption as to proof of ownership at different times and so forth?—I never have been troubled with it at all.

9000. It would be very desirable if others were not troubled with it too?—As a general rule the court valuer puts in his report any improvements that he sees. He says he values at so much, and he takes off so much for improvements, and that is rarely disputed.

9001. In point of fact it comes to this, that your valuer in Kerry, valuing the holding as it stands, and giving the improvements to the tenant, that is found to be the state of facts even when tested by evidence?—I think so, yes; that is my experience, with the exceptions I have mentioned.

9002. He values the buildings as the others do, or the land apart from the buildings, perhaps he would not go into that?—Well, the landlord rarely claims buildings in Kerry, very rarely; as a general rule, that is one of the first questions asked when the case is called on, I mean the first question asked is: "Does the landlord claim the buildings in this case"? and, as a general rule, he says "No," and there is no further contest about it. The buildings, as a matter of fact, are nothing. In the great bulk of the cases it is a mere cabin or shanty that is of no value to anybody, except the man that lives in it.

9003. I do not think that is so in North Kerry; I think they are pretty substantial there?—In North Kerry they are a different class of holdings. I am speaking chiefly of the bulk of the holdings that come into court where the farm buildings are not of any very great value.

9004. Just a couple more questions: On what principle does your valuer fix the fair rent; does he fix the fair letting value of the holding as for a solvent tenant desiring to enter intending to pay that rent from year to year?—Yes, I think he puts down, as a general rule, what he would consider a fair rent for a man going into the land having no previous connection with it at all, taking it as it stands; then he deducts from that a certain amount for improvements (if there are any); then he perhaps deducts a certain amount for remoteness from markets, or he adds something for proximity to markets, and then he puts in something for turbary, if the turbary is allowed.

9005. The main element, the rent, is the rent that a solvent tenant desiring to enter would be willing to pay from year to year?—Yes.

9006. Then what allowance do you make for the tenant's improvements; how do you fix it; how do you measure it?—It is by a rule-of-thumb, I think. The court valuer has seen the improvements, and he says what he thinks he would allow off for the improvements he has seen. I do not in any way dispute his valuation, and do not pretend to.

9007. Is it intended to pay the costs, or is it intended to be interest?—It is intended, I think, to represent, as far as possible, the tenant's interest in the improvements he has made, that is to say if he has added to the value of the land by a substantial improvement, added to it very much, the bulk of that additional value is given to the tenant.

9008. Suppose a man spent 100*l.* on the holding (putting an illustration), and increased the value of the holding 10*l.* a year, what would your valuer do with the improvement of 10*l.* a year?—I do not think he would give him the full 10*l.*

9009. What would he give him?—I could not tell you.

9010. You do not give him any direction on that?—No, I give him no direction; it is not a matter that I think I could give him any directions upon. It depends a good deal, you see, upon the state of the improvements; sometimes there are improvements made that are not maintained; sometimes there is money spent that has not been well spent, or economically spent.

9011. The case I am on is 100*l.* spent, and 10*l.* the present improved value. Would the principle be that after the valuer had given him what he would consider a fair allowance or return, or whatever you would call it, the rest would go to the landlord in the rent?—I think so; there is always a certain amount allowed, as I understand, for the landlord's interest in the holding, and in the improvable quality of the holding.

9012. That would not apply to buildings nor to improvement of the soil?—If the landlord claims the buildings: there is never any value put upon the buildings at all except the landlord claims them.

9013. That is to say, any value in the buildings, when made by a tenant, goes to the tenant clearly?—Yes, it goes to the tenant. The landlord is asked, "Does he claim the buildings?" If he does not claim the buildings there is no rent put upon the buildings at all, but solely upon the land, and the tenant is not asked to pay anything for the buildings. That is a general case. It is very rare that there is any other case. Of course where the landlord has contributed a certain amount to the building why then a certain something is added to the rent for that, but it is done by a rule-of-thumb, as I said before. I do not really know that the valuer has any scientific plan upon which he acts. I certainly do not know of any.

9014. And the interest of the tenant which the court by Section 8 is directed to have regard to in fixing fair rent is in practice limited to his interest in the improvements referred to in Sub-section 9?—I do not know that. I would not say that altogether.

9015. I understood that the rent was the rent which would be paid by an incoming tenant, a solvent tenant; incoming, not an occupying tenant, but another, a tenant from year to year?—Yes.

9016. Then

Mr. *Sexton*—continued.

9016. Then you deduct from that an allowance for the improvements made by the existing tenant. From that I would infer that the interest of the tenant as distinguished from that of any other person is measured simply by his interest in his improvements?—Yes; that is to say, he pays rent for everything that is there except the improvements he himself has made.

9017. And such rent as any solvent person would be willing to pay?—Yes.

9018. I notice that nearly one-third of the cases originated in your county courts have been withdrawn from you and taken into the Court of the Land Commission. Is it the practice of the Land Commission to transfer them as of course when the landlord asks for it?—Yes, under the rules, within a fortnight after service of the originating notice, the landlord may move to have the case transferred to the Land Commission.

Chairman.

9019. Where do they make this motion?—In the Land Commission Court. It is not a motion made in court in the first instance; it is simply a notice of motion served on the tenant and lodged with the Land Commission. The tenant may then show cause against transfer within a fortnight after he receives notice; if he shows no cause by affidavit or otherwise the transfer is effected as of course; the case is at once as a matter of course removed to the Land Commission Court. If the tenant does show cause, then there is a motion in court, and the court decides whether the tenant has shown good cause or not; and if the tenant has shown good cause against the transfer, the case is sent back to the county court, and if the tenant has not shown good cause in the opinion of the court, the case is retained in the Land Commission Court.

Mr. *Sexton.*

9020. In practice what happens is that the case is transferred?—I would not be quite sure, but I do not think I have had a single case sent back to me which was once transferred by the landlord.

9021. That is to say when the landlord makes an application to transfer the case from you it is transferred?—The tenant rarely ever shows cause.

9022. And the cause is transferred?—The cause is transferred; that, of course, is from want of cause shown.

9023. I notice that the agreements are filed; may I ask you whether any agreements of fixing fair rent between landlord and tenant have come before you by reason of not having been filed?—Oh, yes; I have had a few instances.

9024. What happened in those cases; did you make a larger reduction than had been given under the agreement?—As a general rule, yes; the reductions were larger.

9025. Much larger?—Well, I would not be able to say what the proportion was. You see, I have absolutely no statistics and no details of cases; I am depending entirely upon

Mr. *Sexton*—continued.

my memory. I can only say that my memory is that, as a general rule, the rents fixed by the court were lower than the rents agreed upon between landlord and tenant.

9026. I notice that your own deductions in the court are about 10 per cent greater than those given by agreement between landlord and tenant?—That is the average.

9027. I think so, for the year?—I would not be surprised at that. I really do not know; you know as a matter of fact these agreements are generally agreements of considerable standing; that is to say, that they were made some years ago, and do not come before the court until after some years have elapsed; rents are fixed at a very much lower figure now than they were some years ago.

9028. That being so, and the great bulk of these agreements having been made, as we know, from the returns in the years immediately succeeding the passing of the Land Act, that is 1882 to 1885, does it not occur to you that when one of them gets a chance of coming in by reason of the agreement not having been filed, and getting a large reduction when he does come in, that the great body of them would require the statutory term to be shortened in order to have the rents fixed?—That applies not only to agreements, but to all the rents fixed by the court in the same period.

9029. Yes; perhaps in a greater degree to agreements, but certainly in a degree to all the reductions given in the earlier years, the reductions then given being so much less than they are now?—I think there is no doubt, as a general rule, that the rents which were fixed in the earlier years of the working of the Land Act were higher than the rents that are being fixed now, owing to the fall of prices and other circumstances that have occurred in the meantime.

9030. In the meantime those former rents have become excessive?—Oh, they would not be fixed at the same rate now, I think that is so. I do not know whether I might say that I have a very strong opinion which I have formed since I became a county court judge, and have had some experience of the working of the Land Act in the county court, that the system upon which rents are fixed in the county court is entirely indefensible if the system adopted by the Land Commission Court be the right system. To begin with, in the Land Commission Court there are two men (two qualified agricultural experts) who go upon the lands in each case and they come to a common agreement; and both landlord and tenant have the benefit of two minds applied to the case. In the county court the statute only allows one valuer to go, and it is the judgment of one man who is unchecked by the judgment of any other.

9031. The point you have made refers only to the fact that there is but one valuer?—There is but one valuer.

9032. If there were two that point would disappear?—I may say incidentally in reference to that matter that a very large number of cases came in, as I have said, in the year 1893, from the Kenmare Estate to the county court, and it

Mr. *Sexton*—continued.

was intimated to me that the landlord was extremely anxious that both valuers should go and value in these cases. I was myself very anxious that that should be done not only in those cases but in many other cases, and accordingly I gave directions to the clerk of the peace to send these cases to both valuers and let them both go and value. My attention was afterwards called to the fact that the statute is express that it is to "some one" of the valuers that the county court judge is confined, and that it was really *ultra vires* for me; it was an excess of jurisdiction to send two valuers at all; accordingly I said I would not do that in any other case. The result of that intimation was that a very large number of the cases from the Kenmare Estate were withdrawn from the county court and sent to the Land Commission on the ground that the landlord preferred to have the opinion of two valuers instead of one; and that, I think, was a reasonable ground for withdrawing the cases and for taking them to the Land Commission Court. There is another very grave difference between the two systems, that is that the court valuer in the county court is not a member of the court at all, and has no voice in the decision, he has a merely consultative voice; the two agricultural experts, as I may call them, who are attached to each Sub-Commission have a decisive voice; they are members of the court equal in authority with other members of the court, and on all questions of fact and of value they have a decisive and preponderant voice in the court. The county court judge is absolutely the sole judge both of law and of fact, and can if he chooses to do so totally disregard the opinion of the court valuer; the court valuer is simply there to give him his opinion, which the county court judge is at liberty to set aside if he chooses; but, as a matter of fact, the county court judge, as I said before, has no option in the matter; knowing nothing of the facts himself, and having no other mode of arrivng at a conclusion as to the value of the land, except by adopting the court valuer's opinion, he is bound morally (at least I feel myself bound; of course I cannot speak for any other than myself), and I feel myself morally bound to accept the county court valuer's value as the value of the land. Then I issue the decree for which I am alone responsible, no one signs it but myself; it is mine and mine only, yet though I sign it, it is the decree of a man who is not a judge at all, a man who himself does not appear in the case and who has no responsibility as a judge whatever.

9033. In that respect it does not differ from any judgment given by any court of law upon any question of value dependent upon the evidence of experts?—No, but in the cases of courts of law where assessors are brought in, say nautical assessors, to give opinions on questions of navigation or things of that sort; these are only incidental to the main issue, but this is the very matter that the court is deciding, and the sole matter that the court is deciding, the value of the land, the fixing of the fair rent, and in that matter he has absolutely to issue a decree which is the decree not of himself at all, nor of the

Mr. *Sexton*—continued.

court itself, but of a man who stands behind him and does not come before the public as responsible in any way, who is not a member of the court, and who is in this position, that the court may treat his opinion as of no weight whatever if it so chooses.

Mr. *M'Cartan.*

9034. But is not the court valuer examined in court?—Oh, no; the court valuer is not examined in court.

Mr. *Sexton.*

9035. Every day, in the ordinary courts of the country, questions arise in which the value is not only the dominant but the sole question in the case; questions on which the Court has to take the evidence of experts, and act upon it as you do upon the judicial decrees of your valuers?—Do not you see that in the cases you refer to the experts appear on different sides, they give evidence; one man comes up and swears that the thing is so much value, and another man comes up and swears that the thing is of so much value, and there is generally a jury who have a knowledge of the matters in dispute themselves, and who can go and see the object, the building or whatever it may be, and they hear the experts.

Mr. *T. W. Russell.*

9036. In this case you say you do not examine your valuer in court, as I understand?—These are expert witnesses who are sworn and examined and cross-examined; my valuer is a man who is never examined at all in court.

Mr. *M'Cartan.*

9037. He is unchecked and unsworn?—Yes.

Mr. *Sexton.*

9038. He corresponds to the experts who are examined before the courts; we have heard of the valuers of tenants, and we have heard of the valuers of landlords; in addition to those, you have another valuer; you have therefore a greater facility, because you have an additional expert?—Yes; and I am supposed to sit there and hear evidence from the landlord and the tenant, and decide upon that evidence; that is the supposition of the procedure of the court.

Mr. *T. W. Russell.*

9039. And what you do is this; you decide it by rejecting the evidence of both of them; and by accepting evidence which is never put before the court?—Exactly. For what purpose do I sit; to take the evidence of the landlord, and to take the evidence of the tenant; it is a form of evidence as to value; I disregard that evidence altogether (I do not see how I could do otherwise), and take the evidence of the man who is appointed by the court to assist me. Well, I must say that I consider that a most unsatisfactory system, and I consider that it puts the county court judge in a most unsatisfactory position. It is a thing that

I have

Mr. *T. W. Russell*—continued.

I have felt from the very beginning, that I was really giving judgments in matters affecting very largely the rights of property, both of landlord and tenant, where I was acting blindfold and making myself merely the mouthpiece of another man. For that reason I have had a very strong opinion that the county court ought to be abolished altogether as a court for land cases.

Chairman.

9040. You mean so far as regards their jurisdiction in these cases?—Their jurisdiction in fixing fair rents.

Mr. *Sexton.*

9041. Will you tell me this: how does your position really differ in substance from that of the legal Sub-Commissioner, who has practically to do what you have to do, accept the judgment of the lay Sub-Commissioners?—In that case the court consists of three persons; you have two members of the court who are experts, and who see the matter themselves and are able to form a judgment upon it; the legal Commissioner does not pretend as a general rule to form a judgment upon questions connected with the value of the land; he sits there to direct the other Commissioners on matters of law that arise, and he accepts the judgment of his brother members of the court who are equally responsible with himself.

9042. He has something more difficult and delicate to do than anything you have to do, because when the two lay experts who, like himself are members of the court, differ, he has to decide and differ between them, which I submit is a more difficult and delicate thing than anything you have to do?—Well, I have had to do that on one occasion when my two valuers went to see one holding and differed, I had to come to a conclusion between them, and I went through the process of adding the figures up together and dividing them by two, which seemed to me to be a very unsatisfactory method of arriving at the result, but I do not see what else I could do.

9043. I am told that in Tyrone the county court judge there adopts a system the reverse of yours, that he pays no attention to his own valuer but splits the difference between the landlord's valuer and the tenant's valuer; that eases the position very much?—That would produce very unsatisfactory results in my county, I must say.

Chairman.

9044. Have you any further explanation to give?—Well, there was a third point with regard to the court valuer that I think it is right to put before the Committee, that is this: The court valuer is paid by fees upon the cases, he is paid by results and not by salary.

9045. When you say "by results," what do you mean?—That is an unfortunate expression, he is paid by the amount of the business.

Mr. *T. W. Russell.*

9046. By the number of cases?—By the number of cases, not by salary. Now it is perfectly obvious that that is a very objectionable

Mr. *T. W. Russell*—continued.

thing, because whether there be any foundation for it or not, it immediately gives rise to the suggestion in the minds of the people coming into the court that it is to the interest of the court valuer to bring as much business as possible to the county court away from the Sub-Commission.

Chairman.

9047. And therefore?—And therefore to fix the rents low.

9048. To attract tenants into your court?—Yes, I am aware that that objection is made and very largely felt; that as long as the court valuers are paid by the number of cases that come into court, and their remuneration depends upon the number of cases that come into court, there is an inevitable tendency to attract cases into the court by fixing the rents lower. On the other hand, I was told of the converse case, where the court valuer in one case had fixed the rents so low that the landlords had removed the cases into the Land Commission Court and left the county court without any cases at all; then when his successor came into the county he thought the only way of bringing back business into the courts when he found the landlord removed the cases to the Land Commission Court, was to give them the idea that he was fixing the rents high; so you see the matter cuts both ways, but in both ways it seems to me to be a very grave public (I will not use the word "scandal") but at any rate, it is a grave objection to the system of fixing fair rent in the county court.

9049. Now you have stated three objections to the existing system, and you have a further one, have you?—That is all I have to say except this: I think it is obvious to anybody that if the system adopted by the Land Commission of having three Commissioners, two of them agricultural experts, two of them visiting the land and sitting in court hearing the evidence and deciding upon it, if that is the proper method of fixing rents, it is perfectly obvious that the county court system is inadequate, the system of having one valuer who is not a member of the court and has no controlling voice. Whether the county court be right or whether the Land Commission Court be right, it is obvious that both cannot be right, and the two together cannot be defended.

9050. Have you anything further to say?—Yes, Mr. Sexton asked me about the number of cases that were transferred from the county court to the Land Commission Court, and I think I may say from my experience and from what I have heard from sources of information that are open to me, that the chief reason of the transfers of cases from the county court to the Land Commission Court is the objection that is felt to the system of the court valuer.

9051. One court valuer?—To one court valuer.

Mr. *Sexton.*

9052. Felt by the landlord?—Felt by the landlord.

 9053. I understand

Mr. *Macartney.*

9053. I understand that your view is that if the present system is continued in your court it would be better for all interests that the jurisdiction should be withdrawn; you feel that it is so unsatisfactory?—Yes. I think that the hearing in my court is more or less of a sham; the rent is practically fixed by the court valuer when he goes upon the land; anything that occurs in the court afterwards has almost a minimum of effect upon the decision; therefore I would be strongly of opinion that the hearing in the court, as far as the county court is concerned, if the present system is continued, might very well be dispensed with altogether, that is to say if the present system is to be continued, I really do not see why the court valuer should not send in his report to the clerk of the peace; let the clerk of the peace send his report and the value that he puts upon the land to the landlord and tenant respectively, and if neither of them objects within a certain definite time let that stand as the rent; if either of them objects then I think they ought to go straight to the Court of Appeal. I would have no hearing in the county court at all.

9054. Then I understand you would leave the legal questions that might arise to be decided in the Chief Commission Court?—Of course if a legal objection was made to the hearing of the case at all, the county court judge might hear that as a preliminary and not send the case to the valuer at all; if he decided that the case was outside the jurisdiction of the court he would not send the case to the valuer at all, and then, of course, either party might go to the Court of Appeal upon that; but in cases where no legal questions were raised I do not really see the advantage of a hearing in the county court at all.

9055. Then it would be taking your view of the importance of your court valuer's report with regard to the value of the land, which you feel morally bound to adopt?—Yes. Then if either party objects to that value, instead of going through what is the farce of appealing from the court valuer to the court valuer (because that is what it practically comes to), let them appeal direct to another court, who will send two valuers or whatever machinery they may adopt, to decide the case of value.

9056. I just want to understand this point of appeal "from the court valuer to the court valuer," an appeal from your court would go to the Chief Commission?—What I meant was this: when once the court valuer has made up his mind on the land as to the value, then the hearing in the court is practically an appeal.

9057. You are alluding to two different parts of the same procedure?—Yes, if I were in a position, or if I had any material or any power, I mean if I had any knowledge or material that would enable me to modify the court valuer's estimate by my own judgment, then of course there would be something in it; but I really feel that I have not the material, and that I cannot do it.

9058. Assuming that Parliament was reluctant to diminish or abolish the jurisdiction of the county courts with regard to the land cases, would it be more satisfactory to you to be placed in the same position as the legal Commissioners are, to have two court valuers, who, so far as their remuneration was concerned, were placed upon the same independent basis as the lay Commissioners?—Oh, undoubtedly. Undoubtedly it would remove a very great objection to the present county court system if the court valuers were permanent officers paid by salary and entirely independent of the number of cases that were brought into court for their remuneration.

Mr. *Macartney*—continued.

9059. That would, in your opinion, diminish one of your own strong objections, and would it also in your opinion diminish the objections which parties have to going into your court?—I think it would very largely.

9060. Looking at the section of the Act of 1887 dealing with the appointment of court valuers, I see their remuneration is such as the Treasury may determine. I do not know whether you can answer the question or not, but apparently the remuneration can be varied, and the mode of payment can be varied?—The Treasury, as a matter of fact, have fixed the remuneration; they pay the valuers so much for each day they are occupied in work, and each day that they sit in court to hear evidence is considered a day, and there is an allowance for travelling expenses; but of course the remuneration that the court valuer obtains during the year depends upon the number of cases that are brought into the court, whatever may be the standard of remuneration.

9061. You have been asked one or two questions about the agreements which have been arrived at in the County of Kerry between the landlord and the tenant, and I see that in 1894 the agreements fixed during the year ending 31 March 1894 showed a reduction of 21·6; that is in the Land Commission Court, because there were none lodged in your court during that year?—Yes.

Mr. *Sexton.*

9062. There was one, was there not, there?—Yes; there was one. In reference to that matter, I may say that although it is very rare indeed that fair rent agreements are filed in the court, there are a large number of cases in which the rents, when the cases are brought into the court as contentious matter, are fixed by consent; that is to say, before the hearing the tenant and the landlord have come to an agreement, and then the rent is fixed by the court on the consent of both parties without a hearing at all. That occurs in a good many cases, but of course those do not appear among the agreements; those cases are all included in the cases adjudicated upon by the county court judge, because it is his judgment, although it is a judgment on consent. When we are speaking about agreement between landlord and tenant it is right you should know that a good number of cases are not fought out to the end, but that the parties come to an agreement before the cases are heard.

9062*. Just so, but I was referring just now to the settlements arrived at out of court without any hearing at all, and I find the percentage of reduction is 21·6 in Kerry, and the percentage of reduction on the judicial rents fixed in court by

Mr. *Sexton*—continued.

by the Chief Commission and Sub-Commissions for the same year were 26·1 ; now that would be a difference of rather less than 5 per cent. ; do not you think there are many reasons which might determine the tenant to come to the conclusion that it would be just as well for him if he could come to a reasonable agreement with his landlord to fix his rent at something less than the average judicial reductions ?—Oh, I think that happens very often.

9063. I mean to say there is nothing in the comparison of the rents agreed out of court and the rents fixed in court last year that would lead you to suppose that the tenants had not been offered some fair terms for themselves in that 5 per cent ?—Oh, no, I do not think so at all ; I would be disposed to think that where a tenant fixes his rent out of court he believes he is securing very good terms for himself ; I do not see why he should do it otherwise. When once he has served his originating notice he would not agree to get his judicial rent fixed if he thought he could do better.

9064. Would your judicial experience in County Kerry lead you to believe that the tenants as a body are incapable of looking after their own interests in the matter ?—No, on the contrary, I think the Kerry peasant is as well able to look after his own interest as any man on the face of the earth ; that is my experience.

9065. I do not know whether you are thoroughly acquainted with the percentage of reductions made out of court, and those made by landlord and tenant in court ?—No, not at all ; I have absolutely no statistics of any kind.

9066. But may I put it to you, no matter what the discrepancy may have been in any one year between agreements fixed out of court and judicial rents determined in court, that it is a reasonable probability first of all with regard to the agreements arrived at out of court, that those agreements were arrived at upon old rents that were probably more moderate than the rents of the tenants that went into court ; and that in the second place there were circumstances which the tenant thought justified him in accepting a smaller percentage of reduction ?—I could not say anything at all about that.

9067. I put it to you quite generally ?—My own opinion would be that where the tenants came to an agreement with the landlord out of court, they knew pretty well what was going on in court: and of course for some time after the Land Act came into operation we all know that the rents were not fixed so low as they are at present, and I think probably the agreements that were entered into then were entered into having in mind the extent of the reductions that were obtainable in the court.

9068. I see the reduction in 1882 was 20·547. The reduction last year was 22·5 ; not a very large difference ? — It is not a very large difference.

9069. But I am taking the average all round ? —I should have thought that it was larger than that.

9070. Of course, in the meantime the percentage had varied enormously, or had varied very considerably ; so had the differences in the reductions arrived at by agreement. You said something about the fall of prices. Have you carefully considered those ?—No, I have not.

Mr. *Sexton*—continued.

9071. That is merely generally ?—It is merely generally.

9072. I will not ask you anything about them ? —I am told by everybody that prices have fallen, and I accept it as true. I really do not know much about it myself. There is no question whatever that in Kerry the main element in the great bulk of the holdings out of which the rent was made was the cattle, they have fallen enormously, there is no doubt at all about that ; store cattle especially, which is the main product of Kerry, have fallen enormously.

9073. Do you say that they have fallen "enormously" in price ?—Yes.

Mr. *Macartney.*

9074. Since when ?—Since the last few years.

9075. What do you mean by since the last few years ; 25 years, or 10, or seven ?—Oh, no ; not 25 years, it would be a very much shorter time ago than that that they were very high.

9076. Have not there been very great fluctuations, we will say, since 1881. I will take since 1881 : for the last 12 years have not there been great fluctuations, both up and down, in the price of all sorts of cattle : perhaps you have not studied it carefully ?—I have not. I have only been there since 1892, you know. Certainly since I went to Kerry the cattle have not been very valuable.

9077. Of course you do not know at the present time ; I suppose you have not studied prices, lately ?—I have not.

9078. You do not know that they are higher now than they were last year ?—No, I do not.

Mr. *Sexton.*

9079. You have said, have you not, that they are enormously lower than they were a few years ago ?—Yes.

Mr. *Macartney.*

9080. But you also say that you have not studied the question ?—I am giving you that as my general impression, from what I hear in conversation.

9081. With regard to the law reporting of cases in the Land Commission, I gathered from you that you did not think, with regard to this class of cases, there was any great disadvantage as compared with the general volume ?—On the contrary, I think that as a general rule they are better reported ; I think the "Irish Law Times," which circulates very largely amongst the solicitors in Ireland, deals very largely with land cases.

9082. Do you, as a judge dealing with land cases, find that you have just as great facilities in dealing with these as you have in dealing with any other class of cases ?—Quite as great facilities ; that is my experience.

Mr. *Macartney*—continued.

9083. I am not going to trouble you at any length with it, but you were asked one or two questions about the case of limited owners. I take it that in your view the Act of 1881 was intended to deal with those who had established their relations as landlord and tenant?—Yes.

9084. I take it from you also that you cannot conceive that it would be just and reasonable to give any court dealing with the Land Act of 1881, or the Acts that are incorporated with it, any powers in respect of their jurisdiction in that case greater than they would have in any other?—I do not say anything about its being just or reasonable. I say that at present it would be entirely illegal.

9085. I do not want to press it. Now, on the question of dealing with value, as I understand, you have never given any instructions to your court valuer?—No; I have never given any general instructions.

9086. You leave him perfectly free?—I leave him perfectly free. I leave both valuers perfectly free to deal with the question according to their own knowledge and experience. Occasionally, when in court a particular fact is proved in relation to improvements, the valuer will say to me: "How does that stand legally? Does that give the tenant or does that give the landlord the legal right to claim that particular improvement?" And of course I give him the best direction I can upon the point of law; but as for any instructions as to how they are to value the improvements, I have never undertaken to do it, because I do not feel that I would be competent to do it.

9087. Then I may take it that the tenant having claimed and succeeded in proving before you his title to certain improvements on the farm, your own valuer has been on that farm, and I understand in your case he has formed his own judgment?—He formed his judgment as to the value of those improvements himself.

9088. And whatever he may give to the tenant, he is absolutely unfettered by any instruction of yours before, or by any act of yours afterwards?—He is.

9089. Have you ever discussed with your valuer how he arrives at his valuation?—Not generally; in regard to a particular case I may have done so.

9090. You said something about you thought the increased letting value went to the landlord?—I did not say that.

9091. I want to clear up that; that is all?—I said it did not necessarily follow that every penny that the tenant had added to the letting value of the land was taken off the rent.

9092. We have had a good deal of evidence (I do not ask you to answer this unless you feel you can) from the lay Commissioners who have come here before us, that when they had given a fair percentage on the outlay on the tenant's improvements, that percentage generally ate up any increased letting value; that there would be nothing over to distribute between landlord and tenant; could you say whether you think that would be the result of the cases you have decided?—I really could not say, but my opinion is that as far as regards improvements the tenants are dealt liberally with in my court.

Mr. *Macartney*—continued.

9093. Can you give the Committee any information with regard to the cases which have been decided before you; as to whether they have appealed, and how the appeals lie?—I never inquired as to an appeal at all, except a point of law was involved in the appeal. I have no interest at all on the questions of value, because I do not feel that they are my judgments at all.

Mr. *Sexton.*

9094. You do not know that the Court of Appeal has still further reduced your reduction; I mean made the rents lower than you made them, on appeal?—I do not know that.

9095. It is the fact?—It may be so, but I do not know.

Mr. *Macartney.*

9096. You have told us something with regard to the transfer of cases from your court to the Land Commission: is the transfer open to both parties?—Yes. The tenant is the usual person who brings the case into the Civil Bill Court; it is very rarely indeed that a landlord brings an originating notice; and of course it is the landlord who generally moves to transfer; in fact I have never known a case of a tenant moving to transfer the landlord's notice; I think I have only had about three cases altogether in which the landlord was the originator; that is, commenced the proceedings.

9097. I should like to put this paper in your hand which has been handed in by Mr. Bailey (*handing same to the Witness*); will you look at the first table there, "Restrictions on claim for improvements." Could you say whether, in your experience, those restrictions operated very largely; do you think those have had any very material effect on the cases coming before you?—No; as a general result these questions are not raised or pressed before me.

9098. No great difficulty has occurred before you, then, on the question of presumption?—No; I think the presumption is in favour of the tenant in the practice of the court.

Mr. *T. W. Russell.*

9099. Whatever it may be legally?—I think the court valuer always gives the tenant the full value of his improvements and of any improvement that he finds there, unless they are proved to be the improvements of the landlord.

Mr. *Sexton.*

9100. You have told us that the evidence in court, such as it is, justifies that?—Yes; the evidence is that as a general rule the reclamation of waste land, and removing stones from stony land, and bringing into cultivation cut-out bog, is all done by the tenant; the landlord never claims that he has anything to do with that as a general rule.

9101. Will

Mr. *Macartney.*

9101. Will you look at this table of "exclusions" (*handing the same to the Witness*). Have those operated largely in practice before your court?—Oh, yes, I have had a good many conacre cases, but those are not so much between landlord and tenant as between tenant and sub-tenant. As a general rule the conacre tenant, when he finds that his own immediate landlord has fixed a fair rent as against the head landlord, begins to think he ought to get a fair rent fixed, but he holds probably in conacre only, and the evidence turns out to be that it is a conacre letting. This case chiefly arises between tenant and sub-tenant and not as between tenant and landlord, and the agistment lettings are very much the same. Of course occasionally a landlord has land in his own hands which he lets out merely for grazing, and gives no interest in the land to the grazier, but as a general rule that is a case which arises between tenant and sub-tenant.

9102. Are the agistment lettings for the season, or for the year?—When they are making a letting for the year they always make it for 11 months, they always keep a bit of the year out so as to prevent the tenant from saying that he is a yearly tenant.

9103. Some of the witnesses before the Committee have recommended that those exclusions which depend upon the sub-letting ought to be abolished; would that be your view?—Well, that is a very difficult question, because there are some sub-lettings that are extremely objectionable, and that I think it would be injurious to both landlord and tenant to allow to go on without a check. There are other sub-lettings that I think are perfectly reasonable and judicious, and that I think it is very hard that the tenant should not be at liberty to make.

9104. Would you be kind enough to give the Committee an instance or two?—There is one case that I think is particularly hard, where I have been obliged two or three times to shut out a tenant from the benefit of the Act who had a sub-tenancy on his holding which was not created by himself at all, but existed there before he became tenant; that is to say, he took the holding with the sub-tenancy upon it; and I have been obliged in cases of that sort to say that the tenant is not in occupation of his holding because the Court of Appeal has held (first of all I believe it was a dictum of Lord Justice FitzGibbon, in the case of Flannery *v.* Nolan, but it was afterwards adopted by the Land Commission) that where the landlord lets land to a tenant with a sub-tenancy existing upon it, the court is not at liberty to say that the tenant is in *bonâ fide* occupation of his holding because it is impossible to say that he has sub-let with the consent of his landlord, because he has not sub-let at all; it was somebody else who sub-let, and I think that is a very hard case, because the sub-tenancy is the creation actually of the landlord, and he has taken advantage of his own act.

9105. That is a type of case that you think ought not to be permitted?—Yes, that is a type of case, but where a tenant is trying to make a small landlord of himself, that is to say, to let out the land in small patches, I think it is perfectly justifiable for the landlord to object and to say, "I did not let you this land for the purpose of making you a landlord, but I let it to you for the purpose of agriculture, and for the purpose of making a living out of it." I think there is a great difference between the cases.

Mr. *Macartney*—continued.

Mr. *Sexton.*

9106. Of course, if you once fix a fair rent you are aware that any further sub-letting is a breach of the statutory condition?—Oh, yes; I am perfectly aware of that.

Mr. *T. W. Russell.*

9107. Before you pass from that question, you say you think here that a landlord should be under the necessity of having a fair rent fixed for the man who is sub-letting his land, have you ever considered the case where the landlord never objected to it until he came into court, took the rent and assented?—I have met with cases of that sort.

9108. The landlord just objects when the tenant comes in to get the rent fixed?—I have had cases both at the Bar and since I have been presiding in the court. I have had a case such as this. I cannot give you the name of the case, but I believe it was on Lord Lansdowne's estate, in the neighbourhood of Kenmare, where a man was paying Lord Lansdowne 15*l.* a year for his holding, and he had a sub-tenant who was paying him 10*l.* for a very insignificant part of the holding. Well, I really thought that that was a case where the landlord might legitimately say: "If you are getting 10*l.* for a very small part of what you are paying me 15*l.* for, why should I allow you to fix a fair rent?" The sub-letting was proved clearly, and the man could not get a fair rent fixed; but what I mean to say is that I think the landlord was morally justifiable in objecting to the fair rent being fixed.

Mr. *Macartney.*

9109. May I take it, then, that you do not think it would be in the interests of the country to throw open sub-letting entirely?—Oh, I think not. Undoubtedly the power of unlimited sub-letting would be fatal.

9110. With regard to the exclusion of town-parks, have you had many town-park cases before you?—I am not sure; if there were any there were only very few from the neighbourhood of Tralee, but as a general rule town-parks do not exist in Kerry.

9111. Well, if you have not had large experience of it it is not desirable to ask you about it. Have you looked through that paper, and do you see any other classes of exclusions which you think have operated largely in your experience?—You see I am in this position, that my experience is almost nothing upon this question. The exclusions have not been brought prominently before me, because, as a general rule, as I said before, they are not insisted upon to any great extent.

Mr. *T. W. Russell.*

9112. You stated in reply to Mr. Sexton that a tenant under a limited owner whose tenancy was determined was practically in the same position as any other man who was proved to have a defective title?—Well, I said he was in the same position as any other man who took a lease from a limited owner which the limited owner was not legally empowered to give him.

9113. Now I want to bring your mind to the consideration of this question in regard to limited owners. We have had evidence given before us regarding 87 tenants in the County of Armagh where Trinity College was the head landlord, where a whole series of middlemen came in between the tenant and the head landlord; very large reductions were given under the Rent Redemption Act to these 87 tenants (I think they amounted to 52 per cent.); the immediate middleman was placed in very great peril by these large reductions, and it was proved to us that should Trinity College evict the middlemen, the whole of these 87 tenancies were determined by that fact?—But under what circumstances, because as a general rule when the middleman's interest goes the tenants become, under the 15th Section of the Land Act of 1881, tenants to the superior landlord.

9114. That is where he surrenders?—But if there is an eviction for non-payment of rent it is a different case.

9115. This is a case that has been put before us?—I quite understand that.

9116. The tenancies are determined by the eviction of the middleman by the head landlord?—For non-payment of rent.

9117. For non-payment of rent. Now, assuming that to be the law, is there any necessity that those 87 tenants whose tenancies are determined, should be created future tenants, and incapable of having a rent fixed under the head landlord; do you see any reason why?—I do not quite understand the question.

9118. Let me put it in this way: the tenancies are determined?—Yes.

9119. The Commissioners may as well have never sat; not only is the present tenancy determined, but these 87 tenants are made into future tenants incapable of getting a rent fixed. Do you see any reason or any necessity for that?—There are new tenancies created?

9120. Yes, so we are told?—When you ask me whether I see any necessity for it, do you mean a legal necessity or a political necessity. It follows as a matter of law.

9121. Yes, it follows as a matter of law?—It follows that when there is an eviction for non-payment of rent (unless the sub-tenants can redeem in some way) of course the tenancies are gone.

9122. They are not only gone, but the tenants have become future tenants?—If they choose to redeem, cannot they retain their status?

9123. I am dealing with the legal effect of it; they become future tenants?—Yes, that is so; if they do not redeem, the period of redemption expires, and the tenancies are determined; then under any new contract made with them they would become future tenants.

Mr. *T. W. Russell*—continued.

9124. We sit here under a reference which requires us to make suggestions either as to law or practice; now do you see any reason, admitting the legal necessity of determining these tenancies, why they should be created future tenancies by that?—That is to say, that the new tenancies should enure as present tenancies and have all the incidents of present tenancies under the Act.

9125. Yes; do you see any reason why they should not remain as present tenancies and have all the incidence of present tenancies under the Act?—There is one obvious reason from the landlord's point of view; that is, it would deprive the landlord of the chance of these people redeeming by paying up the rent due to him by the middleman.

9126. What position is he in if they are made future tenants?—Then he has the making of his own bargain.

9127. The moment they propose to enter into a new contract with the landlord they entered into that contract as future tenants?—Undoubtedly, because their tenancies are tenancies created after the 1st January 1883.

9128. I am taking these 87 men as samples; they have not been to blame themselves; they have gone on for years paying these impossible rents; the Land Court interfered and reduced these rents by 52 per cent.; by that Act of the Legislature these present tenancies are determined, because that is the real fact that drives the middleman out?—Yes.

9129. Do you see any reason why these people should be deprived of the benefit of the Land Court, and thrown back upon the mercy of Trinity College, or any other landlord?—I think it is certainly a very serious thing from the tenant's point of view; but, as I said before, all these things have a double point of view, and the landlord would naturally say, "Why should I be deprived of any right whatever under the Land Act"?

Mr. *M'Cartan.*

9130. You spoke about the power of redemption, or the right of redemption; do you mean by that that they are to redeem by paying the rent which they owe the middleman, and which the middleman owes the landlord?—Yes.

9131. Which in this case is much higher than their own rent?—It would be higher than the new rents fixed, but they might of course always redeem the holding by paying up the middleman's rent.

Mr. *T. W. Russell.*

9132. For these 87 tenants in the County Armagh that would be a very serious proposal?—You will understand I am only giving my view of the law of the question, and the way it stands as a matter of law. Of course I see the hardship of it, but what I say is, from the tenant's point of view it is a very serious hardship.

9133. Now you have told us how you proceed with your valuer in fixing rents. It differs from the

Mr. *T. W. Russell*—continued.

the procedure of the Land Commission; they hear the case first in court, and then the Commissioners inspect the holding?—Yes, that is so; and many of the county court judges do the same thing. I omitted to say to the Committee what I think might perhaps lead to some misunderstanding. I gave the practice in my court, but the county courts have very various practices. In many counties the county court judge does not allow the court valuer to hear the evidence at all. In many courts the county court judge says: "No, I will not allow any man to sit in my court beside me as adjudicating upon these cases; you are only appointed to go and value the lands and give your report to me. I sit in court, I hear the evidence, and I take your report as an element in deciding the case, but I do not allow you to sit beside me and hear evidence as if you were a judge in the case. That is the view taken, I know, by some county court judges. Then in other counties they follow the method of the Land Commission. They ask the valuers to come and sit and hear the cases first of all, and then, having heard the evidence, to go out and visit the lands.

9134. The point I wish to get at is this; the evidence we have had with regard to the procedure of the Land Commission has amounted to this: they first sit and hear the cases; the tenant gives his evidence and the landlord gives his; when they come to the question of improvements the legal Commissioner instructs the Sub Commissioners, "That is the landlord's," "That is the tenant's," and they go out upon the holding, having heard the evidence as to improvements, and they are then able to decide what improvements they are to give to the tenant and what improvements they are to give to the landlord. That is the theory upon which the Land Commission proceed?—Yes.

9135. How does your valuer deal with the improvements when he goes upon the farm; he has no instructions from you?—What he does is this: he sees the land, he hears the tenant's statement, he hears the landlord's statement, he comes to a conclusion in his own mind as to who made the improvement, then he fixes his value upon that; he afterwards hears the evidence in court; if he hears anything in court, either on examination or cross-examination which alters his view, he alters his rent.

9136. But then he is not a lawyer; he does not know the law as to improvements?—No; but suppose he goes on the land, and is told by the tenant: "You need not value the buildings, for I put all the buildings here, or my father put all the buildings here;" there is no one there perhaps to check that statement, but when it comes into court it turns out that the landlord spent a considerable sum of money on those very buildings; then, of course, the valuer is bound to give the landlord the benefit of that expense, and to put some rent upon the buildings as the landlord's share.

9137. I suppose on the question of improvement, the law in Adams *v.* Dunseath governs you?—Oh, undoubtedly.

9138. May I take it that this is the method

Mr. *T. W. Russell*—continued.

on which you work that decision; from what you told Mr. Sexton, you look upon the relation existing between landlord and tenant more as a partnership than anything else?—Oh, well, indeed, I have formed no theory upon the subject at all.

9139. The point is this: I am going to ask a question about increased letting value; we have had witnesses here who told us that they did view the relationship existing as one between two partners. I use the word; it is not applicable to the case, but for convenience sake I use the word, the landlord's share of the partnership consists of the soil and its inherent qualities; and the tenant's share in the partnership consists of his property upon the soil and under it; in drainage and things of that kind. Now when an outlay is effected for improvements and proved before you, you give the tenant a percentage upon his expenditure?—Yes.

9140. And if the letting value of the land is raised by that expenditure, you exercise a judicial discretion as to what ought to be done with that increased letting-value, is that what you do. I think you said to Mr. Sexton that you did not give it all to the tenant?—I think, as a matter of practice, the landlord's rent is not reduced by the full amount of the increased letting-value, the increase given to the letting-value of the land, because the landlord is supposed to have some interest in the land too.

9141. That is the "partnership" I am describing?—Suppose, for instance, a man owned a very valuable machine which he let out to a man who saw a great improvement that could be effected upon the machine to enable it to do a great deal more work in the same space of time, the improvement would be of no use unless he had the working of the machine with the improvement; would not the owner of the machine be entitled to some percentage upon the increase?

9142. I am only wanting to find out the practice; do not take me as arguing any theory at all?—I think the landlord is certainly entitled to some part of the improvable qualities of the soil.

9143. Your evidence has slightly differed from some evidence we have got; was it not suggested that, so far as regards the increased letting value, wherever it existed you exercised a judicial discretion upon that increased letting value as to whether it belonged to the landlord or to the tenant, or in what proportions it belonged to either?—Well, you see, that is so much in the hands of the valuer; he has it so much in his own hands to say what is the increased value given to the land by this.

9144. Now if it came to a matter of law, what would you decide?—If it came to a matter of law I would say that he was to exercise his discretion; I do not interfere with the value of discretion.

9145. Unless on a point of law?—Unless he asks me on a point of law.

Chairman.

9146. Unless he asks you, you do not interfere with his discretion; is that what I understand you to say?—Yes.

 9147. I understand

Mr. *Macartney.*

9147. I understand your judicial discretion is never exercised in altering any figures of your valuers except when questions of law arise on the improvements?—Yes.

Mr. *T. W. Russell.*

9148. The point I wish to submit to you is this: supposing this actually took place, that you had a case before you in which there was an increased letting value over and above the allowance made to the tenant, what, under Adams *v.* Dunseath, would you do in regard to that; would you give it all to the landlord; would you give it all to the tenant, or would you exercise your judicial discretion as to the proportion to be given to either?—I think if I had the doing of it myself, I would make the best division I could between landlord and tenant, but as to a matter of that sort I trust to the experience of the agricultural expert who is there to assist me.

9149. As to the question of fact?—Yes.

9150. But when it came to a question of law you must act?—Yes, I must act as to the question of law. I might instruct the valuer in this way: I could say, "you must not give all the value to the tenant, and you must not give all the value to the landlord."

Chairman.

9151. Do you do this; I think you said you "could" do this?—Suppose the question arose; but I never would venture to interfere with him as to what proportion was to go to the landlord and what proportion was to go to the tenant. As a matter of fact the question has never arisen.

Mr. *T. W. Russell.*

9152. That settles it?—It is merely a theoretical question. Of course the legal Sub-Commissioner has an enormous amount more cases to deal with than I have to deal with, and a great many questions will arise with him that do not arise with me, and he is brought into much closer relations with his own colleagues sitting with him than I am with a man not sitting in court at all, but who is simply brought in as an expert for the purpose of giving his "expert" advice.

9153. You stated that you were rather conservative about legal rights?—I do not like interfering with legal rights unless there is some good reason for it.

9154. I suppose you think that your practice would be better than the Act of 1881?—I think the onus lies on those who interfere with freedom of contract.

9155. If you are conservative about rights of property belonging to any class, you must know that the Act of 1881 was passed to conserve the legal rights of the tenants?—I am not criticising the Act of 1881 at all, nor am I saying that it was not perfectly right; I am only saying that where the *raison d'être* of the Act of 1881 does not apply, I would not apply the Act, and where men, as in the great multitude of cases of town-parks, are just as well able to make their contract as the landlord is to make his, and are as independent of the landlord as the landlord is of them, I would not dream of interfering.

Mr. *T. W. Russell*—continued.

9156. You have raised the question of town-parks, and I just want to put one question to you upon that subject. There is great difficulty as to what is a town; that difficulty has arisen?—Oh, undoubtedly, but I do not think there is so much difficulty in determining what is a town-park?

9157. You must determine what is a "town" before you get a town-park, surely?—No, I do not think so. I think you might have a town without town-parks; you might have town-parks although you had nothing that would strictly be called a town.

9158. We are painfully aware of that; we have discovered that you may have town-parks where there is a village?—Yes; the real point of town-parks, as far as I have ever been able to understand it, is this: is the man a *bonâ fide* farmer, or is the man a man who merely gets a bit of land as a luxury.

9159. I am not a lawyer, but I have sat here something like 20 days?—I am not speaking about the law at all; I am speaking about interfering with the law in favour of holders of town-parks.

9160. I have sat here about 20 days now, and have been led to understand by great lawyers like Lord Justice FitzGibbon that the first thing you really have to decide is, what is a town, before you come to any conclusion about what is a town park?—I am not speaking of law at all. I am asked about the exclusion of town-parks from the Act, and my view of the matter is this, that where you have got a man who is *bonâ fide* making his living by land, and is dependent upon the land for the bulk of his living, that there you have not a town-park at all; you have the ordinary agricultural tenant; but where you have a man who is not making his living by land at all, but is making his living by something else, and has simply got a bit of land as a luxury, to keep a cow upon, or to raise vegetables upon, he is not an agricultural tenant in any sense of the term, and he is not, properly speaking, in my mind, within the purview of the Act.

9161. Will you allow me to put this question to you, and it is the last I will put; it is upon the same point: assuming a difficulty about town-parks, everybody admits there is a difficulty?—About defining them, undoubtedly there is.

9162. Assuming the difficulty to exist, do you see any reason why the Land Commission should not decide in regard to these town parks what a fair rent would be, taking into account first the proximity value and then the accommodation value if necessary?—I do not see why the Land Commission should interfere with them at all.

9163. That is hardly an answer to the question. I asked you, Did you see any difficulty in the Land Commission doing that?—I do see a great difficulty; and I will tell you what it is: you have a town; take such a town, for example, as Newtownards or Ballymena, in the North of Ireland, where you have a large number of shopkeepers, well-to-do men, who are extremely anxious

Mr. *T. W. Russell*—continued.

anxious to get a bit of land in the neighbourhood to keep a cow upon, to raise vegetables upon, or potatoes for their households, there is and must necessarily be enormous competition for these bits of land, and they are willing to give very large prices for them; if one man thinks he has not got value for his money and lets it drop, there are 20 men ready to take it up. I really do not see why the law should step in to give an exclusive right to a certain proportion of those people who are anxious for this land, to give a monopoly to them and shut out all the rest of the people for the mere purpose of taking something out of the landlord's pocket to put into the pocket of a man who is probably as well off as the landlord.

9164. You have taken Newtownards. Suppose you come to a town with a population like that of Dundrum. Take Dundrum, with a population of 367, or take the village of Fivemiletown, in South Tyrone, and other places of that kind?—It depends entirely upon the circumstances of the particular case. For aught I know there may be five or six people living in Dundrum keeping shops and making a comfortable living out of their shops, who want bits of land in the neighbourhood of Dundrum and are willing to pay for them; one of them gets a bit of land, the others are excluded, and I do not really see why you should give him a perpetuity in the land.

9165. You draw a radical distinction between what is purely an agricultural holding and that which is held merely for accommodation?—I do draw a distinction between a man who is an agricultural tenant and a man who is not an agricultural tenant, but who simply gets a bit of land as a luxury.

Mr. *Sexton.*

9166. Wherever these "five or six" people are found together there is no security that the place may not be turned into a town for the purposes of the Act?—I really do not know about that. In Kerry we have an enormous number of villages; the people live there for convenience, they are all farmers, but they all live in the villages; they do not have separate houses on each holding, as is the ordinary rule in other parts of the country; I never would dream of constituting town-parks in a place where they were all *bonâ fide* agricultural tenants living for their own particular convenience in a particular locality. But where men are living in a town under such conditions that they can make a good living by shopkeeping, or by some other means, and holding land, not for the purpose of their living, but for the purpose of luxury, and to increase the accommodation of their own households, I really do not see why the law should interfere on their behalf at all.

9167. My point is, five or six agricultural people, if you like, living together, giving the land about where they live an accommodation value distinct from its agricultural value, may practically turn that place into a town as far as town-parks are concerned; there is no population test?—So far as I understand, the Court of Appeal has laid down that the population test is

Mr. *Sexton*—continued.

no test. The test is: are there a sufficient number of people gathered together under such circumstances as to give an accommodation value to the land.

Mr. *M'Cartan.*

9168. I do not think you have mentioned how your court valuers are selected?—The court valuers are selected by the Land Commission; the Land Commission appoints a certain number of court valuers.

Chairman.

9169. Is your court valuer selected by the Land Commission?—They are all appointed by the Land Commission; the county court judge has the privilege of selecting from the list a particular individual, but he must select from the list appointed by the Land Commission.

9170. When he has selected him, does he keep him or change him about?—He may change him as often as he likes, as a general rule. At the next sessions I might, if I choose, order the clerk of the peace to send the cases to some other court valuer; he has no tenure of office.

Mr. *M'Cartan.*

9171. You can send him away if you please?—I can send the two.

9172. You mentioned that there were two; are they two for the county?—There were two in office when I was appointed, and I continued them; I did not change them at all.

9173. The list is simply sent down, I suppose, to the county court judge, and he makes his selection?—Well, as a matter of fact, I got no list; I simply found these two men in office, and I continued them in office.

9174. As I understand, you said first your court valuer goes out on the farm?—The court valuer goes out and values.

9175. He has no instructions of any kind?—He has no instructions from me at all; he simply goes and sees the farm as it is, and forms his opinion upon it.

9176. Then after he sees the farm he makes the report as to improvements?—Yes.

9177. Does he keep a book besides this ordidary report?—He has a book of his own; he has a field book, in which he marks down his observations and his calculations and the qualities of the land, and how much there is of each.

9178. Does he then submit the field book to you when he comes back?—I may have a look at it if I choose. As a matter of fact, he has it in court and he refers to it to correct the evidence by.

9179. You mentioned that your court valuer dealt liberally with the tenants as to improvements?—I am telling you what my impression is, that is, that both the court valuers deal liberally with the tenants as to improvements.

9180. You have no means of ascertaining that?—I have given them no instructions, but I see what goes on in court.

9181. Is there any other court, I wonder, where the inspector goes out first, and afterwards hears the evidence?—I think so; I cannot be

Mr. *M'Cartan*—continued.

sure about it, but I am quite sure that my predecessor where he is now continues the same system.

9182. I mean any other than a county court judge; I do not mean your particular court; there is no other court in Ireland in a parallel case?—No, I think not.

9183. As I understand, in your county court cases you hear the evidence of the landlord and tenant, and their experts, and you tell us that you are in no way affected by that evidence in the decision you arrive at, as you take the report handed in by the court valuer?—Well, I always ask the court valuer, "Does what you have heard affect your estimate"? He generally says "No."

9184. So the unsworn and unconfirmed estimate of the court valuer is taken, and there is no attention paid, I may say, generally to the evidence given by the landlords and the tenants?—I would not exactly like to say that there was "no attention" given to it.

9185. But they do not affect your decision by their evidence?—As a matter of fact, where they differ from the court valuer's estimate, I take the court valuer's estimate as being the one I am bound by.

9186. The Act of Parliament only allows you to refer to one valuer?—Exactly; "one valuer," "someone of whom" I think are the words of the Act of Parliament.

9187. You mentioned to Mr. Sexton the Kerry peasant as an example of a person who was able to take care of himself?—I find them so as a general rule. I do not mean in a bad sense. I mean they are all sharp fellows.

9188. You mean as far as faculties are concerned?—Yes, faculties; they are a very intelligent people.

9189. A number of agreements came before you, unfiled agreements, where they had not been filed, and I think you reduced the rents?—Yes.

9190. That is accounted for, I understand, by the fact that the agreements were entered into at an early stage after the passing of the Act?—I suggested that as a reason. I do not say that that is a full account of it.

9191. You also suggested that the probability is that they were moved very much by the decisions given in the court?—Yes, I am quite sure that they have their eyes about them, and that they know what is going on.

9192. I think Mr. Macartney said that in 1882 the percentage of reductions was 20·547 per cent., and in 1894, 22·5?—I think it was.

9193. But the reduction was very much larger in court than in the case of the agreements. The suggestion was that the agreements at that time were fixed at about the same rent as had been fixed in court?—Yes.

9194. We find in the case of the rents fixed in court it is only a differ nce of 1·953 per cent., but upwards of 10 per cent. difference in the case of the agreements? — Yes. I do not mean to say that is the sole ground. I have found cases coming before me in the county court where large amounts of arrears have been thrown off by the landlord where the tenant agreed to a rent, and I have no doubt that the dispensing with the arrears would be an element, and that the tenant would gladly enter into an agreement to give a higher rent than probably he would get in court.

9195. Would it not suggest itself to your experience that in many cases arrears keep the tenants out of court?— Undoubtedly they do keep them out of court.

9196. As to sub-letting, am I right in saying that your opinion is that where sub-letting had taken place before the passing of the Act for years, either with the knowledge of the landlord, or with his assent, the tenant should not be thereby prevented from having a fair rent fixed when it was no injury to the landlord?—Where it is no injury to the landlord, I think, undoubtedly.

9197. Now, as to free contract: you are of opinion that free contract would be even better than the Act of 1881?—If the tenant has an interest in these improvements at all; if he had an interest in the land before 1881, he would be liable to eviction and to loss, except, of course, for the compensation under the Act of 1870.

9198. Just the same as persons who have town-parks now?—Yes.

9199. Exactly the same?—Exactly the same. What I mean is this: I would only interfere; that is a matter of policy, of course, that I have not to decide; but my own view is that I would not interfere with freedom of contract further than was necessary to secure freedom; I mean that where a man was not in a position to freely contract with another, I would try to put him in the position of freely contracting by the aid of the Legislature. If men were perfectly free to contract with one another, I would not interfere with them.

9200. Had not the whole land legislation of this country up to 1860 been in favour of the landlord, and since then has it not turned so as to make the law in favour or in relief of the tenant?—Undoubtedly, I think the Act of 1860 was very favourable to the landlords' rights.

9201. The landlords' rights?—Undoubtedly.

9202. It changed the relationship between landlord and tenant, did not it?—It did, and made the landlords' remedies very much simpler and easier, and I think that the Acts since that time have been more or less in favour of the tenant.

9203. And since 1887 has it made it still easier for the landlord to proceed by way of ejectment?—Yes.

9204. Are you aware that under the statutory conditions the landlord, on an application to the court, can take whatever land he requires on terms for building purposes or for the purposes of improving his estate?—Yes.

9205. If he can do that why would not you allow these people who have town-parks, simply because they have other industries or are shopkeepers, to have rents fixed; I cannot agree with you as to the land being a "luxury"; why should not the shopkeeper have the right to have a rent fixed, and not be at the mercy of the landlord?—As a general rule the holder of the town-park is just as free to take a bit of land as he is to buy a hat.

9206. As a matter of fact, in Ireland at the present

Mr. *M'Cartan*—continued.

present time, are not the holders of town-parks the sons of men, or the descendants of men, who held them and lived on their farms as ordinary farmers?—They pass, of course, from hand to hand; they pass from generation to generation, very often.

9207. Why should not they be protected?—I do not know that there is any great claim for improvements in respect of town-parks; I never heard of them.

Mr. *Sexton.*

9208. You are aware, of course, of the state of the law as regards town-parks, demesne lands, and pasture lands?—As a matter of practice there is no improvement in the case of town-parks that is really of any value.

9209. Is it not the law that the holder of a town-park, or even of demesne land or pasture land, has been getting the whole of the claim for improvements under the Act of 1870?—I believe so.

Mr. *M'Cartan.*

9210. That being so, why would he not be protected; why would not he get security in his holding giving the landlord the best rent that he is entitled to?—The answer to that is that in my opinion the onus in the case of interfering with freedom of contract lies upon those who want to interfere with it, and that what you have to do is, not to show why the holder of a town-park should not be included, but why he should be included in the Act. What reason is there for the Government interfering between the holder of a town-park and his landlord?

9211. Has not the whole policy of the Land Laws of late years been to give some kind of freedom and independence to the tenant, and take him out of the power of the landlord?—Yes, where the tenant was dependent upon the land for his living, and where he must hold on to the land to his last gasp and give any terms to get it; but where a man is just in as independent a position as his landlord and derives his income from another source it is quite different.

9212. You must know very well that in nearly all the small towns in Ireland the holders of town-parks are not persons who are independent?—As a matter of fact I do not know it, I think they are.

9213. As to improvements, you know the towns in the County Down very well?—I do; very well indeed.

9214. And I think you scarcely know any town in the County Down where the lands almost adjoining the town have not been worked and improved just as much as any ordinary farm, in the city of Castlewellan now, for instance?—If a shopkeeper in Castlewellan has an acre or two of land on which he keeps a cow, and chooses to improve it for his own advantage, why should he have a fair rent fixed?

9215. Take 10 or 20 acres; town-parks apply to that just as well as to one or two acres?—In the case of 10 or 20 acres, it becomes then a very different question, because it becomes agriculture for profit, which is a different thing altogether from accommodation land. I do not

Mr. *M'Cartan*—continued.

think I would extend the use of the term "accommodation land" to a farm of 20 or 30 acres, because then I think the presumption would be that the farm was being used for agricultural profit, and not for accommodation.

9216. It is used for profit, I expect, and the land may be an accommodation?—When I say "profit" I mean that profit is the primary end; for example, suppose I chose as county court judge to live in Castlewellan, as I might do, and that I got an acre or two to keep a cow upon, why should I have a fair rent fixed?

9217. I do not know; I would be for treating the county court judge just as generously as any other person?—Well, I must say I think it would be a very mean thing for me to ask for it.

9218. Newtownards you mentioned?—I know Newtownards very well indeed.

9219. Am I right in saying that up to the passing of the 1881 Act there was no check on town-parks at all?—Whatever was the law the facts of the case are the same, that is to say, that these lands were held by owners of houses in Newtownards, people who were making their living in another way, and holding them not merely for profit, or primarily for profit, but for accommodation.

9220. At all events as I understand it, in Newtownards the tenant was formerly able to sell the tenant-right of his town-park, and now, according to these decisions, he can do nothing of the kind?—Every one knows that on the Londonderry Estate the tenant was allowed to do a great many things that he was not allowed to do elsewhere.

Mr. *Brodrick.*

9221. I think you stated just now that the rents were now fixed lower owing to the fall of prices and other circumstances; I do not quite understand what circumstances you were thinking of?—Well, I am not sure that I was thinking of any other circumstance than the fall of prices.

9222. The fall of prices is what was in your mind?—Yes.

9223. You also stated, did you not, that with regard to the sale of the tenant-right you would allow the tenant to sell at the highest price he could get?—Yes.

9224. Do you mean what I understand you to mean that you would abolish the right of pre-emption of the landlord?—No; but if the landlord chose to give what the tenant could get from another person I would give it to him.

9225. Would you abolish specified value?—I would give the landlord the right of pre-emption at that value.

9226. You would not give the landlord the right to require the tenant to take the farm at the rent which the landlord could get for it?—I think not.

9227. You think the landlord should pay the competition price for the tenant-right?—Yes.

9228. You do not think the tenant should pay the competition price for the rent?—No.

9229. Is not that a little unfair as between the two?—The tenant is selling his own interest in the land; the landlord on the contrary, if he got

Mr. *Brodrick*—continued.

the highest competition value, would be taking not only his own interest, but also the tenant's interest.

9230. I will not pursue it; that is your view?—Yes.

Mr. *Sexton.*

9231. I want to ask you a question: Is not the fair rent, when fixed, the solvent competition rent such as a solvent tenant would give?—No, subject to the tenant's interest.

9232. In the improvements?—No, the tenant's interest in the holding.

9233. Leaving out improvements?—Yes.

9234. I want to discover how it is that you can only appoint one valuer, while the Land Commission can appoint two?—I am prevented by the statute.

9235. The power arises under Section 37, Sub-section (6), does it not?—Yes, I believe so.

9236. "In determining any question relating to a holding, the court may direct an independent valuer"?—But there is a different section; we are now under another section. That used to give the county court judge the power to appoint any valuer he chose.

9237. The Act of 1881, you allude to?—Yes; but under the Act of 1887 the Land Commission appoints the valuers, and it is "some one" of these.

9238. "Some one of whom"?—Yes, it is a different jurisdiction.

9239. Now in the Act of 1881 let me direct your attention to this, Section 48, Sub-section (4), giving the Land Commission itself the power to appoint valuers. The words are: "In determining any question relating to a holding the Commission may direct an independent valuer to report to it his opinion"?—Yes.

9240. And those words are held to authorise them to appoint two valuers in every case of appeal to them?—That may be so.

Mr. *Sexton*—continued.

9241. Identical words?—No, not identical words; the word 'one" is used in the other.

9242. "An independent valuer;" "an independent valuer" might mean more than one?—I do not think it is so meant. I think the words "some one of whom" limit it strictly to one.

Mr. *Macartney.*

9243. What did you mean by your reply to Mr. Sexton about a solvent tenant?—When Mr. Sexton used the words "solvent competition rent," a competition rent is a different thing altogether from what a solvent tenant would be ready to give for the holding, because in many cases the landlord could get an offer of a rent very much higher than any solvent tenant would give.

Mr. *Brodrick.*

9244. Does not that hold good with regard to tenant-right also, that a tenant may get more than a solvent tenant can afford to pay?—He gets the money; the landlord does not.

Mr. *Macartney.*

2245. I thought you attached some definite meaning to the words?—I do not think there is any definite meaning.

Mr. *Sexton.*

9246. It is as much "as a solvent tenant would be willing to give from year to year"?—Well, I think the court valuer forms his idea of what a man, who was going to make a living by the farm, would fairly give and be able to get a living out of it.

9247. As much as he would give?—As much as he would give if he was in perfectly independent circumstances.

Friday, 13*th July* 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. EDWARD HEARD, called in; and Examined.

Chairman.

9248. YOU are a valuer assisting his Honour Judge Neligan?—Yes, one of his valuers.

9249. Your name is on the list that has been made up by the Land Commission from which Mr. Neligan selects?—Yes.

9250. How long have you worked with him?—I think about four years.

9251. Have you worked with any other county court judge?—Oh, yes; a former recorder; I think about four years with the two; the former, Judge Hamilton, and now Judge Neligan, perhaps five years, I could not say exactly.

9252. You have been county court valuer?—Yes.

9253. What was your training, if one may ask?—I have been 45 years farming, in fact I was brought up to farming. I farm various qualities of land; I farm five farms of different qualities in different districts.

9254. In which county?—All in Cork.

9255. Now what is your course of proceeding?—The clerk of the peace sends me a number of copies of fair-rent notices, on the back of which the claims of tenants are entered; I go upon the land, first having sent a printed notice to the landlord and the tenant or to the agent.

9256. When you say "the claims of the tenant" you mean claims for improvements?—Yes.

Mr. *Sexton.*

9257. When they are over 10*l.*?—Yes, over 10*l.* I go upon the lands then and have a man with me to dig the land; he digs each field; I enter in my note-book the value of each field separately, scale it on the spot roughly, and scale it accurately when I go home; I come to a field that the tenant says is improved or drained; I examine it to see the outlets of the drains, from which to judge whether it has been drained or not, and then I question the tenant as to how those drains have run, whether it is thorough drainage or otherwise. I may say, in passing, that it is a very difficult business to find out whether that fiel is thoroughly drained or only partially drained, because the drainage is hidden. Then as to reclamation, that is patent, because I have the Ordnance sheet in my hand, and I see on the Ordnance sheet the land that was reclaimed 50 years ago, or about 48 years ago, about the date of our maps, and if I see that that land was fenced and reclaimed at that time I take no notice of it, in the way of improvements.

Mr. *Sexton*—continued.

9258. I suppose, almost uniformly, you have the tenant with you?—Oh, yes, by my side. I have here a portion of the Ordnance map which I have brought with me; it may be that some of the Committee who do not know our Irish maps might wish to see it.

9259. You said just now that you took no notice of reclamation done 40 years ago?—Fifty years ago.

9260. You said 48 years ago, I think?—That is the date of our maps.

9261. What do you mean by taking "no notice"?—I do not give credit to any tenant for it; it may have been done 100 years ago, you know.

9262. You have a field-book, I suppose, like the field-book of the Sub-Commissioners?—Yes, like that.

9263. You go alone, you do not go in pairs?—No, that is the error, I go alone.

9264. What do you mean by "the error," an error of what?—There ought to be two valuers on the spot.

9265. You think that sending you alone without a colleague is an error?—Oh, yes.

9266. You would rather have a colleague with whom to compare notes?—Certainly; it is a great responsibility individually, singly, to go out upon a farm to value it.

9267. Then, with the tenant's list of claims in your hand you go through them?—Yes, I go through them.

9268. And do you put down the deduction under each head if you admit the improvement to be a good one?—Yes.

9269. You put the deduction down under each head?—Yes, I value it on the spot, each field.

Mr. *Sexton*—continued.

9270. And you enter all that up in a report?—Yes.

9271. Then what do you do with the report?—Then, at home of course, I scale the quantities more accurately, make out my report, and hand it in to the county court judge, with the map all marked. We mark on the maps the different qualities of land, "Rough Land," "Unreclaimed Land," "Reclaimed Land," "Dairy Land," "Tillage Land," different colours.

9272. This classification is furnished to you, is it not?—This classification is furnished, and I make it according to that classification; I colour the maps.

9273. But I mean these heads are furnished to you?—Yes.

9274. Then you apply the classification to the "heads" before you?—Exactly.

9275. You sum them all up and you practically suggest the fair rent?—Yes.

9276. That report is submitted to the county court judge?—That is submitted to the county court judge.

9277. What does he do with it so far as you are concerned; what is the next step you yourself take?—In court he reads over the report and generally has some question to ask me before he hears the evidence on the Bench; I sit with him.

9278. He has some questions to ask and explanations, and so forth?—Yes; he tries to get acquainted with the holding before he hears the evidence.

9279. How do you mean when you say "to get acquainted with the holding"?—By asking me questions on the report.

9280. The circumstances of the holding?—Exactly; then he hears the evidence.

9281. That is to say the evidence of the tenant and the landlord?—Yes; and their valuers sometimes.

9282. Where are you when that is going on, are you in the court?—I am sitting with him.

9283. Though sitting on the Bench you take no part in the proceedings?—None, except in reply to questions put to me by the county court judge; if there is a difference, perhaps, of opinion as to a reclamation or something of that kind.

9284. A difference of opinion between the tenant's valuer and the landlord's valuer?—Between the tenant's valuer and the landlord's valuer, yes. He asks me my opinion, and I state what I have seen on the spot.

9285. Does he ask you that openly and publicly, or privately on the Bench?—Privately.

9286. Then before confirming or overruling your award does he take any further counsel with you?—No.

9287. Tell us what Mr. Neligan does?—He does not give the decision straight off; he considers the case, and perhaps it is quite a week after the hearing in another district that he gives his decision.

9288. In the meantime, in any form, whether on the Bench or otherwise privately, does he consult you?—Oh yes, on the Bench, but not otherwise.

Mr. *Sexton*—continued.

9289. I do not mean consult you on points that arise as you have just now described; but does he consult you on the general outcome of the evidence that he has heard?—Yes, and sometimes changes my award; sometimes raises it, or sometimes lowers it.

9290. But he does consult you?—Oh, yes.

9291. And he gives you an opportunity of defending your award after you have heard the evidence of the two parties?—Oh, yes, he gives me the opportunity. If reclamation is proved in court that I have been doubtful about; for instance, I have sometimes put a remark, "Tenant claims such and such reclamation, doubtful about it;" then that is investigated, as I state, and then if I see it proved I state what ought to be allowed.

9292. But to go back; does he give you an opportunity of saying to him, "Well, my award, if I had known so-and-so, would have been different"?—Exactly; that is what I mean.

9293. That is what he does?—Yes.

9294. As a rule, does Judge Neligan accept your awards?—As a rule.

9295. As a rule he does?—Yes, usually, in fact on the spot one generally is able to form a better opinion than from the evidence, and I must say that in nine cases out of ten we do get very fair information from the tenant.

9296. That is to say, in nine cases out of ten do you mean that the evidence taken in court does not materially alter the facts brought out before you on your inspection?—Exactly.

9297. Does the landlord or his agent come on to the ground with you after?—Very seldom: and I should also say that very often both agent and tenant say, "We will be satisfied with the court valuer's decision, we will produce no evidence."

9298. It would seem to follow from what you have said that the case the tenant has made generally stands good?—Yes, generally.

9299. That is to say that the landlord's evidence produced in court as a rule does not shake the case made by the tenant?—He very seldom produces evidence that is contrary. Of course cases do arise, but it is seldom. The agent is generally present, and when the tenant and agent agree to accept the valuation of the court valuer, the judge gives his decision at once before he leaves the Bench; he does not wait.

9300. Does Judge Neligan conduct in his own mind an independent inquiry, do you think, or does he take your award without much examination?—Oh, no, he examines it closely; in fact I may say in his court there is a judicial inquiry.

9301. You heard Judge Shaw the other day; you were in the room when he gave his evidence. Did you hear Judge Shaw use the language: "As a matter of fact, the county court judge, as I said before, has no option in the matter, knowing nothing of the facts himself, and having no other mode of arriving at a conclusion as to the value of the land except by adopting the court valuer's opinion, he is bound morally (at least I feel myself bound; of course I cannot speak for any other than myself), and I feel myself morally bound to accept the county court valuer's value as the value

Mr. *Sexton*—continued.

value of the land. Then I issue the decree for which I am responsible; no one signs it but myself; it is not mine and mine only, yet I sign it; it is the decree of a man who is not a judge at all, a man who himself does not appear in the case, and who has no responsibility as a judge whatever." That was Judge Shaw's language as to his relation to the judgment he signs, and as to the position of gentlemen like yourself who act as valuers. Is that true of Judge Neligan?—Oh, no.

9302. What is the difference, then, between Judge Neligan's point of view and Mr. Shaw's?—Judge Neligan really holds a judicial inquiry; he hears the evidence on both sides, and takes notes of it, whereas in Judge Shaw's court he does not take notes of the evidence at all. I have been in his court. He just acts as he states there.

9303. Will you kindly tell us what Judge Neligan does whom you are in the habit of seeing at work?—He hears the evidence on both sides.

9304. Let me put it in this way: From your observation Judge Neligan does not feel himself morally bound to accept your valuation?—Well, he does not accept it. I cannot tell as to his feelings, but he does not accept it.

9305. Therefore we may take it that he does not feel himself morally bound to accept it?—No.

9306. If he does not accept it you cannot suppose he would believe it to be a moral obligation?—No; in fact a case just comes to my mind which appeared three times in his court in consequence of evidence. I was sent back to value the farm a third time in consequence of evidence as to boundaries.

9307. As to boundaries; but as to improvements?—No, there were no improvements in this case.

9308. In no case have you gone back, or been desired to go back by the judge, to re-value?—No, not as to improvements; not that I remember.

9309. On no matter have you been sent back except boundaries?—Only as to a dispute about boundaries, the landlord claiming a portion which the tenant disputed, and it is not decided yet.

9310. How did you set to work to settle that question of boundaries?—I will shortly put the case: Landlord and tenant were present; neither of them knew the boundaries; I valued as they directed me; when it came into court a map was produced, and my map was produced also marked, and it was proved that I had valued on wrong boundaries; I was sent out again; it came into court again; and then came a claim as to the title to one of those little portions, and it is undecided yet, so that there is a judicial investigation held in court by Judge Neligan.

9311. That was a dispute on title apparently, not on fair rent?—It was on the last appearance that it turned out on title; the landlord claimed a certain portion which the tenant stated was a free gift.

Chairman.

9312. You have not such confidence in your own valuation as to make you content with your award being a final award, have you?—I am prepared to state that a valuer's valuation is only his opinion; he may be in error; it is only his opinion; therefore, I think there ought to be two valuers who would, on the spot, take counsel together for it is a most difficult business to value a farm that you have never seen before.

9313. And I suppose there would be something to be allowed for what, in science, is called the personal equation; I mean some valuers would be inclined to value improvements higher than others?—Yes, the opinion of one man may differ from that of another.

9314. But, in short, you would rather have two valuers?—Yes.

Mr. *T. W. Russell.*

9315. You stated in reply to the Chairman that if you went on a farm and found reclamation 48 years old there you took no notice of it?—Yes, that is the case.

9316. By "taking no notice of it" you mean that you fix rent upon it, I suppose, as reclaimed land?—I fixed the rent upon it as it is.

9317. That is what you mean by taking "no notice of it"?—Yes.

9318. Then that reclamation may have been done by the tenant?—It may have been.

9319. Or his predecessor in title?—It may have been.

9320. Under your system of "taking no notice of it" the tenant does not get the benefit of it, but the landlord does?—Yes.

Mr. *Sexton.*

9321. Where do you find that authorised in the law; have you inquired at all whether you are pursuing an authorised course in doing that?—In the court there is generally a question put to the tenant as to when his reclamation was done, when it was made; it will have been made perhaps 15, 20, or 30 years ago, but when it goes back so far as that he never knows.

9322. That is to say, that although the law says the reclamation of waste land, whenever it may have been done, entitles the tenant to exemption, you assume in advance that he will not be able to prove it?—I ask him, and he tells me he never knows when it was done. You never can find a tenant give you any account of what happened, say, 40 or 50 years ago.

9323. That is to say you assume in advance that he will not be able to prove it?—I just ask him, and his answer always is that he does not know. I might just state in answer to that question that the map shows us the portions not only that have been fenced, but reclaimed; they are all marked, and we see the parts that have been reclaimed at that time.

Mr. *T. W. Russell.*

9324. You gave a perfectly clear answer of what you mean by "taking no notice" of reclamation that is old; it is that you take the land

Mr. *T. W. Russell*—continued.

land as it stands and fix the rent upon it as it stands?—Yes; I should have said "take no notice of his claim of reclamation."

9325. Now as to your process of valuation; you go upon the farm and do you proceed in the same way that we are told the ordinary Sub-Commissioner proceeds, that is you value it minus the buildings?—Yes.

9326. And then after you have come to a valuation upon that basis, if the buildings are proved to belong to the tenant you deduct for them?—Oh, no; if the buildings belong to the tenant, if he claims them, I would put no value upon them; I value them so that if the landlord should prove his claim in court, I might be prepared to state what they were worth, but I do not bring them into my valuation if the tenant claims them.

9327. Are you directed to pursue that course, or is it adopted on your own responsibility?—On my own responsibility, the judge is acquainted with my mode of valuing.

9328. Do you think that is the best way of valuing a farm?—I do.

9329. Do not you think that the presence of buildings and other improvements upon the farm, although you propose to leave them out, must insensibly affect your mind as to the value of the land?—No, I do not think so.

9330. Do not you think a much better process of valuation would be to value the farm as a going concern, as it stands, everything included, and then find out who the buildings belong to, who has done the improvements, and deduct the amount due under that head from the gross amount?—Well, I do not think it would be a superior way of doing business. You know we presume the buildings are the tenant's, because we generally find it to be so.

9331. You generally find the improvements belong to the tenant?—We generally find the buildings belong to the tenants.

9332. Have you found that the tenant generally does the improvements all along?—Generally.

9333. Have you found much improvement done by the landlord in the County of Cork?—Not as a rule, there are exceptional cases.

9334. And do not you think the landlord now has less interest than ever in making improvements?—Yes.

9335. And do not you think that the improvements since the Land Act have been more than ever the tenants'?—Yes, and will be.

9336. And that the landlord, being a mere rent-charger, is still less likely to do anything in the way of improvements?—Quite so.

9337. We had it from Mr. Greer, the Land Commissioner, the other day, that although his Commissioners act just as you act in valuation, he thought it would be a much better way to take the value of the whole thing as a going concern, then let the improvements be proved, and deduct them from the value of the farm as a going concern; do you see any objection to that?—I see no objection, but I do think it would be more difficult. As a rule we value the lands, and add on for the buildings if the landlord has expended money upon them.

Mr. *T. W. Russell*—continued.

9338. You would have to add on if the landlord had expended money upon them, undoubtedly?—Yes, of course.

9339. Are the maps you use the same as those used on the Land Commission?—The same.

9340. Are they furnished by the Land Commission?—They are furnished by the Land Commission.

9341. In coming to your valuation do you take prices into account at all?—Oh, certainly; not the prices "of the day."

9342. Do the Land Commission supply you with a published list of prices?—No.

9343. You take into account prices in arriving at your valuation?—Yes.

9344. On what process do you proceed in that respect; now take cattle for example?—I do not take into account the prices I see in the papers; I am a practical farmer and I know how my own farming is going on year after year; I am one of the few farmers who keep an account of their farming, very few do in Ireland, and it is from that that I judge in my own practice.

9345. Then in dealing with the question of prices you are guided solely and entirely by your own experience as a farmer?—Yes.

9346. I think you told me that your five farms varied also?—Yes.

9347. That they were different classes of farms?—Different classes of farm land.

9348. Therefore you cover the whole area?—Yes; it is by the fairs I judge the prices; selling at the fairs.

9349. That is as regards cattle?—Yes.

9350. You have only been five years at this work?—I think it is about five years ago that I commenced.

9351. How long have you been farming?—Forty-five years.

9352. Now as to prices; there has been a continuous decline for some years, has not there?—Yes, since the seventies.

9353. I suppose it was at its worst in 1879–80?—Yes, 1879, 1880; they began to fall in 1879, but the seventies were extraordinary in prices.

Mr. *Carson.*

9354. Does this mean in cattle?—In everything.

Mr. *T. W. Russell.*

9355. You say it has been continuous ever since?—Yes, more or less.

9356. Of course there have been fluctuations?—Yes.

9357. Ups and downs?—Yes.

9358. But the tendency has been down?—The tendency has been down.

9359. All along the line?—All along the line, yes.

9360. Would the rents fixed in the early period of the Land Commission, say from 1881 to 1887, be fixed upon the same plane as they would be fixed now, taking that fall into account?—I think I would say 1881 to 1884 perhaps.

9361. Very well, take your own period?—The rents

Mr. *T. W. Russell*—continued.

rents fixed then are too high for the present prices.

9362. If they came into court now they would be subject to reduction?—Yes, and I may say in continuation of my answer that I have been sent on farms by the Court of Chancery to give an opinion as to whether the rents were too high that were fixed in those years, and I have always found them too high.

9363. Have you ever come across any rents fixed by what is called "agreement"?—Yes, and I have fixed them myself (and do) by agreement; I have got cases in hand at present; the landlord and the tenant leave the fixing of the rent to me.

9364. That is outside the court altogether?—That is outside the court altogether; it is not common, but it is very frequent.

9365. That is hardly what I meant, but there have been 120,000 cases fixed by agreement, are you aware of that?—Yes; I did not know that that was what you referred to.

9366. Have you had to revise the rents in any case where they had been fixed by agreement?—Yes, I have had to lower the rents.

9367. You have had to lower these rents?—Yes.

Mr. *Sexton.*

9368. Always?—Oh, yes.

Mr. *T. W. Russell.*

9369. Always do you say?—Where they were fixed early.

9370. When they were fixed early?—Yes.

9371. Looking at the fluctuations in prices, and the continuous downward tendency that you have described, have you any idea as to the length of the statutory period, do you think 15 years is too long?—Well, looking at it in that light I would say it is too long, but otherwise it unsettles tenants to have it shorter.

9372. I will come to that, keep yourself to the one question?—Yes.

9373. Taking it from the standpoint of a practical valuer, you find a difficulty in covering 15 years?—Yes.

9374. With any idea of precision?—Decidedly.

9375. Seven years or ten would be easier for you?—Yes.

9376. The only difficulty that you see to shortening the term is that it would have a tendency to unsettle tenants?—Yes.

9377. You think it would make them constantly look forward to change?—Yes.

9378. Have you found any deliberate deterioration of land on the part of tenants?—I have found exceptional cases.

9379. Exceptional cases?—Yes, I have.

9380. What have you done in that case; have you allowed the tenant to profit by his wilful deterioration?—On one occasion the late Recorder raised the tenant's fixed rent over that of his valuer, in consequence of its being proved, even by the tenant's valuer, that the land had been wilfully deteriorated.

9381. Then the man was not suffered to profit by his deterioration in that respect?—No, he lost by it.

9382. The last question I have to ask you is as to the proceedings in court; you send in your report upon the farm to the county court judge?—I hand it in on the Bench.

9383. You sit on the Bench with the county court judge?—Yes.

9384. And the evidence is taken of the tenant and the landlord?—Yes.

9385. And if anything is brought to your mind at all likely to influence the decision you have arrived at, you alter your award?—I do not alter it, but I tell the judge; I have no power to alter it.

9386. As a matter of fact I suppose the judge usually acts upon your award?—He does.

9387. The evidence in court very seldom decides it?—Very seldom.

9388. Therefore as a matter of practice the award of one valuer (the county court) has just the same effect as the award of the two valuers in the Sub-Commission?—Yes, and that is an error to my mind.

Mr. *Carson.*

9389. As regards a county court judge being affected by the evidence of value in court, have you noticed whether there is any approach to agreement at all between the evidence given by the landlord's valuer and the tenant's valuer?—Oh no; there is a very wide difference generally; the tenant's valuer as a rule puts extraordinarily low valuations on.

9390. What does the landlord's valuer do?—He is generally nearer the mark than the other as a rule.

9391. In your opinion is the difference so great between the landlord's valuer and the tenant's valuer that it would be impossible for the judge to form an opinion, both of them being respectable men?—Usually it would be very difficult.

9392. Supposing he had not your valuation at all; if he had not your valuation how could he form it?—It would be very difficult.

9393. Is it therefore your opinion that the expense of this hearing in court, and this evidence given by these valuers in court is really thrown away?—Usually; I refer now to the valuation given by those valuers.

9394. That is what I mean; the valuations given in the court?—Yes.

9395. Can you tell us at all what these valuations in court cost as a rule?—The tenant generally pays a guinea to his valuer, and the landlord pays three.

9396. That is thrown away; if the landlord has 50 cases in court, he probably loses 150*l.* for nothing?—No, because a man will do half-a dozen cases in the day.

9397. He is paid by the day?—Yes.

9398. Then, in addition to that, is he paid for going out on the land?—No, he gets so much for his day's work.

9399. Is not he paid something for going on to the land too, as a rule?—He is paid three guineas for his day's work on the land, and three guineas in court.

9400. Three guineas a day?—Yes.

Mr. *Fuller.*

9401. And the tenant pays, how much?—The tenant pays a guinea; that is what I hear from them; they tell me they pay a guinea.

Mr. *Carson.*

9402. In addition to that, do the landlords and the tenants provide surveyors and maps in court?—Maps only; unless there is a dispute about the area.

9403. As a rule they do not give any expert evidence in court?—No.

9404. Now as regards your proceedings in court, as I understand you value the holding without the buildings?—Yes.

9405. But you are prepared in court with the value of the buildings?—Yes.

9406. So that if the county court judge comes to the conclusion that the value of the buildings ought to be added to the rent you are prepared to give it?—Yes.

9407. That is your object?—Yes; on my report it is the value *ex* buildings.

9408. Now I want to ask you about that. Mr. Russell asked you as to whether your mind was affected by the fact that there are buildings there; do you value the land as if there were no buildings on it at all?—I value the land as if the tenant lived on a neighbouring farm, which they often do; they often have four or five farms.

9409. Sometimes you go on grazing lands?—Yes, often.

9410. Do you value that as if it were land only?—Yes.

9411. Now with reference to this question of the reclamation of waste lands; do I understand you to say that if you find land reclaimed, or land as to which you are able to form the opinion (upon looking at it) clearly that it is reclaimed land, you do not take that into consideration?—No, I do not; any land marked on the Ordnance Sheet as reclaimed and arable I do not take into account.

9412. You do not take the fact of its reclamation into account?—No, I do not; that is a matter for the judge,

9413. Do you value it just as you see it there?—Exactly.

9414. In its reclaimed condition?—Yes.

9415. Do you report to the judge that it has been reclaimed?—I mark it on the map; my map is before the judge.

9416. Is the judge's attention called to the fact that it was reclaimed land?—If the tenant disputes it, he proves it in court.

9417. Wait, now; you were talking of cases where the tenant was not able to tell you when the reclamation was made; I want to keep you to that; the judge's attention, as I understand you, is called to the fact that it was reclaimed?—The tenant sometimes claims that the whole farm was reclaimed; he says, "I reclaimed it all."

Mr. *Sexton.*

9418. And he often does it, does he not?—He may have done it.

Mr. *Carson.*

9419. I want to take a case now and see how it is worked out. Suppose you found a portion of land reclaimed and that you were able to see was reclaimed (that is what you were talking of to Mr. Russell), you ask the tenant when that was reclaimed?—Yes.

9420. But he is not able to tell you?—But I can tell from the map.

9421. Can you tell within what time?—No, I can tell the fact that it was made.

9422. By the map?—Yes.

9423. But you cannot tell the time at which it was made?—No.

9424. What is the date of the map?—Eighteen hundred and forty-eight, I think.

9425. Therefore, if there is no reclamation on the map, and you find reclamation on the land, you can always tell that it was made since 1848?—Exactly.

9426. Would you report that fact to the judge, that there was reclamation there since 1848?—Of course, on my report I have stated the facts, so many acres reclaimed.

9427. Would you allow it the tenant in that case?—Certainly.

9428. Then even if he was not able to prove it you would still allow it?—I would go by my map and allow it, even though he was not able to prove it.

9429. Because you would be able to form an opinion as to the date from "1848." Supposing it was proved before the judge that the tenancy existed, as is very often the case, from generation to generation, what would the judge do when you reported to him that there was reclamation there which you were able to see, but which the tenant was not able to prove?—I do not catch your question.

9430. Suppose it was ascertained that this tenancy existed from generation to generation, and that you found that there was reclamation there which the tenant was not able to prove the date of, what would the judge do in that case?—Then he would give him the value of his reclamation, but such a case has not arisen in my experience.

9431. Then how do you know he would?—I know he would.

9432. He would give the tenant the reclamation of the land?—If the tenant proved it.

9433. I am saying where the tenant is not able to prove it?—Oh, I do not know; I cannot say.

9434. Suppose the county court judge came to the conclusion, from what you told him about the date, that the reclamation must have been made during the tenancy, what would he do?—I cannot say; such a case has never occurred.

9435. Then you must be talking of very old reclamation?—Yes, some of this reclamation may be 200 years old perhaps.

9436. But at all events, as I understand your evidence, in every case where the reclamation was made since 1848 you have given it to the tenant?—Certainly.

9437. You say you have found that tenants generally do the improvements in the County of Cork?—Yes, as a rule.

Mr. *Carson*—continued.

9438. Does that relate to drainage?—Drainage and reclamation.

9439. Drainage and reclamation?—Yes.

9440. Do not you find as a general rule that the landlord has contributed to the drainage?—Sometimes we do.

9441. As a general rule?—No, not as a general rule; I think not.

9442. In a good many cases?—No, it is exceptional.

9443. Exceptional?—I would say so.

9444. Is it not usual for him to make an allowance per perch?—Very often you find the landlord opens the drain, and the tenant closes it, and then the tenant only gets half.

9445. Then that is doing half?—Yes, sometimes I have found cases of that kind.

9446. Have you found that tenants have neglected these drains?—Oh, yes; and the consequence is that if I find drains choked and silted, and perfectly useless, I allow nothing.

9447. You do not allow for it?—No; sometimes I ask the tenant: "Can you show me the outlet of these drains''? He will search and search, and cannot find a single outlet; they are silted up.

9448. Of course they are of no use?—They are of no use.

9449. That is why you allow nothing?—Yes.

9450. Do you find that often arises?—Indeed pretty often. I will not say "as a rule," but pretty often.

9451. You say you have found a number of rents that have been fixed by agreement?—I will not say "a number," I would say a few.

9452. You say "a few," and that the earlier rents were too high?—Yes.

9453. Do you know how they were fixed?—Some of them were fixed in court.

9454. I mean were they fixed by being valued?—The agreements you are speaking of.

9455. Yes?—Usually by agreement between landlord and tenant.

9456. Usually for the purpose of coming to that agreement did they get somebody to go down to value the land?—Not usually, I think.

9457. They merely came and said that so much was to be the rent?—Yes.

9458. You say these were between 1881 and 1884, chiefly?—Yes.

9459. Did you ever at all find that they arose through any unfair dealing of the landlords?—Oh, no; but my answer referred also to the Land Commission in speaking of rents fixed at that time; they were too high.

9460. You found them equally too high, as in the case of the rents fixed by agreement?—Oh, yes. No one in those years supposed the fall was going to continue, it was looked upon as temporary; now it is permanent; that is the case, I think.

9461. Is it your evidence that since 1884, in fixing the rents, the probability of the downward prices continuing has been taken into consideration in the rent?—Oh, yes.

9462. Now as regards your system of fixing the rent yourself, do you fix a competition rent?—No.

Mr. *Carson*—continued.

9463. You do not?—No.

9464. Minus the tenant's improvements?—No; the competition rent would be a fearful rent for the tenant.

9465. Then I may take it that your valuation is a good deal below the competition rent?—Yes.

9466. You would not take this as a definition would you; a fair rent is a competition rent minus the yearly value of the tenant's interest in the holding?—No, certainly not; if there were competition rents to-morrow, you would see rents as high as ever they were; there is the same desire and thirst for land.

9467. May I ask you: could you at all tell me, I do not know whether you can, how much your rent is below the competition rent?—I could not say, because you could not fix a competition rent at all; one does not know where it would go to. Tenants will give each an enormous price for a piece of land now, even at the present day, that you could not fix a competition rent.

9468. Then I may take it, no matter what the competition rent is in a particular district, or no matter what evidence you may have before you from seeing what is given, and that kind of thing, you do not take that into consideration at all?—Not at all.

9469. Your rent is entirely irrespective of the competitien rent?—We never think of a competition rent.

9470. Have you fixed at all sums for enabling the court to fix the specified value?—Only on two occasions, and those were exceptional; they were occasions where the tenant and landlord agreed; the tenant agreed to hand over the land to the landlord at a specified value.

9471. At the specified value?—Yes.

9472. What did you put as the specified value?—I acted according to the Act. Those were the cases of two small farms, one was put at five years' rent and the other at seven years' rent, according to the Act of 1881.

9473. Did not you put the competition rent which the tenant could get in the open market?—No, because both the farms were desperately deteriorated and the tenant had no claim for improvements; if he had had a claim for improvements for buildings or anything of that kind, I would have added it, but the Recorder was quite satisfied; he said he thought it was fair.

9474. As I understand, you you fixed the specified value in one case at five years and in another at seven years?—Yes.

9475. Although the tenant had done no improvements?—Yes.

9476. And the land had become deteriorated?—I acted in accordance with the Act.

9477. The land had become deteriorated?—Certainly.

9478. Had a fair rent been fixed?—We fixed the fair rent first.

9479. You first fixed the fair rent?—We first fixed the fair rent and then the specified value.

9480. Can you tell me how much you took off the rent in this case, about how much, or the percentage?—No, I could not; we value the land as we find it.

9481. In its deteriorated condition?—Yes.

Mr. *Carson*—continued.

9482. In its deteriorated condition, and then having valued it at a fair rent in its deteriorated condition you gave seven years' purchase?—One was given five and the other seven.

9483. Where he got the interest he had done no improvements?—It was simply acting according to the Act, as to improvements they were *nil*—they went the other way.

9484. That was a transfer of a pretty large slice from the landlord to the tenant; not only had he done no improvements, but he had deteriorated the land and got the rent fixed upon the deteriorated condition, and then he got seven years' purchase?—That is quite true.

9485. Was that your opinion of the intention of the Act?—It was my opinion according to the Act, and it satisfied both landlord and tenant. I may say one was the son of Judge Litton.

9486. Can you suggest at all why it is that the tenants have refused to go into the county court so much?—No; the tenants have not refused, but the landlords transferred the cases.

9487. From the county court?—From the county court; numbers of cases are transferred by the landlords from the county court to the Land Commission.

9488. Then is it your evidence that as far as tenants are concerned they are just as well satisfied with the county court as with the Land Commission?—I believe they are better satisfied, because their cases run through quicker; it is done in three months, whereas the other may be three years.

9489. What objection has the landlord to the county court?—I do believe the objection is leaving it to the one valuer; they do not like to have their cases left to one valuer.

9490. Is not there the same right of appeal from the county court?—Oh, yes.

9491. You think the objection is that there is only one valuer?—I do think that is the principal objection.

9492. Do you think in the case of county courts it would be an improvement to have two valuers instead of one?—Certainly.

9493. Can you suggest to us any way in which in your experience we could improve the system of valuing; can you suggest any better system than the present?—Well, so far as the county court practice goes, an improvement would be to put on two valuers.

9494. I know; but except that difficulty?—And secondly, I think if the cases were first heard in court before the valuers went on the land, it would be a great advantage.

9495. In other words you would have the court valuer sit with the county court judge, as the lay Commissioners sit with the legal Commissioners?—Yes, and hear the cases first.

9496. And hear the cases first, but except that you do not suggest any improvement?—No, I do not.

9497. Do you think the hearing might be dispensed with altogether in cases in which there was nothing but value to be determined?—I believe it might, provided the landlord or the agent and the tenant were present and an agreement could be made on the spot; I do believe it would be very satisfactory.

Mr. *Carson*—continued.

9498. Do you think that would be feasible in many cases?—I very much fear not.

9499. Then it is no use to suggest it?—It would be the best way of doing it, but I think the tenant likes getting into court; he is satisfied when it is done in court, when he gets a judicial decision, otherwise he would be always suspecting that he did not get full justice.

9500. Do you suggest at all that we should lay down any definitions as to how a fair rent ought to be arrived at?—No, it is one of the great difficulties.

9501. More or less a rule of thumb, is it not; you take prices, and experience, and quality of the land, propinquity to markets, and all those kind of things, they all come conglomerating into your mind?—I repeat again it is merely an opinion that the valuer gives.

9502. According to his skill and according to chance?—Yes.

9503. And you cannot suggest that we could lay down any definition which would in anywise aid it?—No.

9504. Do you think that in any way any kind of uniformity could be brought about between the Sub-Commissioners and the valuers?—I do think it is most extraordinary that the uniformity is so very close.

9505. Some people think that arises because there is a general idea of knocking off about 30 per cent., but there have been very great divergencies between Sub-Commissioners?—Yes, there have, but they are exceptional cases.

9506. You think they are exceptional?—I do.

9507. We have had some evidence on the subject?—I have seen it. I have met cases of the kind.

9508. Do you think it is a good thing to leave the same valuer in the one district, or to change him from time to time?—I think it is a great mistake bringing a valuer down, say from the prime lands of Limerick, and putting him on the poor lands of Cork, and *vice versâ*; they know nothing about our lands; we know nothing about theirs.

9509. You think it is not the same thing to value good lands in Limerick as to value poor lands in Cork?—I think it is a great mistake to change the valuers.

9510. You think it is better to draw from your local knowledge?—Of course I do.

9511. Have there been many appeals from your valuations?—No, not many; very few.

9512. As a rule, have they been affirmed?—Yes, as a rule.

9513. Just one question more; you will not take it as put in any way personal to you, I merely want to know whether you are paid by salary?—No, we are paid by the day.

9514. Then I suppose you are only paid for such days as you are acting as valuer?—That is all.

9515. You are not, so to speak, on the permanent staff of the Commission in any way?—No, none of us are.

9516. You

Mr. *Carson*—continued.

9516. You are simply paid by the day?—Simply paid by the day.

9517. May I ask what you are paid?—Three guineas and travelling expenses; not hotel expenses, but travelling expenses.

9518. I suppose you do not consider that is excessive?—No, indeed.

Mr. *Dillon.*

9519. You stated that in examining the farms you were guided a good deal by maps; those, I suppose, are the Ordnance Survey?—The Ordnance Survey.

9520. Did you say the date of these maps, was it 1848?—I think it was 1848.

9521. Do not the dates vary?—They do from 1848 to 1850, perhaps.

9522. I thought the Ordnance Survey extended over a number of years?—Not in Cork.

9523. Then your observation applies to Cork only?—To Cork only; I do not value for the county court excepting in Cork.

9524. Then do you draw an arbitrary line in deciding who is to have the property in reclamations as to the date on which the Ordnance Survey chances to have been made?—Yes.

9525. How do you reconcile that with the law; there is no reference to the making of the Ordnance Survey in Cork?—As I said before you come upon land and the tenant says, "I reclaimed the whole farm"; I look to my map and find that in 46 years only certain portions have been reclaimed; I cannot go back upon the other; the tenant can give me no proof of it, it is merely an assertion.

9526. Are you clear, or have you any reason to be certain in your own mind, that those Ordnance Sheets mark all the reclamations?—I think they are very correct; it is wonderfully correct.

9527. Wonderfully accurate?—Yes.

9528. You even find, I think, a field that has been fenced and not reclaimed?—I find from the map that there are fields marked as being fenced and not yet reclaimed. On those, of course, we give the tenant his improvements.

9529. Then your principle is that every piece of reclamation you find on a farm, and which is not marked on the Ordnance Sheet made in 1848, you give to the tenant?—I give him nothing for his improvements upon it.

9530. I mean you give it to the tenant. I will repeat the question: Do you give to the tenant every piece of reclamation which you find on a farm, and which is not marked as reclaimed on the Ordnance Sheet?—Oh, yes; it is so by the Act.

9531. Can you tell me what principle is present to your mind in fixing a fair rent. I will try to make the question clearer to you: We have had here mentioned a number of rents; we have heard of an economic rent; we have heard of a fair rent; we have heard of a fair competition rent; and we have heard of a competition rent; and some Commissioners have said that their idea of a fair rent was a competition rent, with an allowance for the tenant's improvements. You say that in fixing a fair rent you never have the least reference in your mind

Mr. *Dillon*—continued.

(you do not think of) to a competition rent?—Yes.

9532. What do you think of?—I think I may explain it thus: I go upon a farm, and I find that farm would support five or six cows; I know what those cows ought to give, and what they ought to bring in in the year; I check my section rent by that, and I check the stock rent by the sectional rent; I check one by the other.

9533. When you say you check one by the other, have you present to your mind any principle of the division of net profits as between the landlord and the tenant?—Yes; we will suppose now that a dairy cow is bringing in about 5*l.* a year. I take off a pound for deterioration (that is keeping up the stock) and give half to the landlord, that would be 2*l.*

9534. And half to the tenant?—Yes.

9535. Of course you are speaking now of gross?—The gross would be 5*l.*; I take off a pound for deterioration, keeping up the stock, and I allow 2*l.* to the landlord.

9536. That is to say you allow the landlord two-fifths of the gross produce?—It comes very close to that.

9537. Two-fifths of the gross produce on a dairy farm?—On a dairy farm.

9538. You would not apply the same principle to a tillage village farm?—No; that would be one-third, one-third to the landlord, one-third to the tenant, and one-third for his expenses in labour and seed, and expenses of that kind.

9539. Would you say that on average tillage land in Ireland one-third would cover all the outgoings except rent?—Yes.

9540. You think so?—Yes.

9541. That is your principle of fixing fair rent. I just wanted to come at the method you work upon; you are a farmer yourself?—Yes, largely.

9542. And have been for a long time; how many years do you say you have been farming?—Altogether 45 years farming.

9543. In Ireland?—Oh, yes, County Cork.

9544. You are, I believe, one of the few farmers in Ireland who keep regular accounts? Yes, very few do.

9545. You ought to be able to give very interesting evidence; could you give us an idea of the relative profits of farming now and 20 years ago, taking, say, the middle of the seventies; 1874 and 1875?—Taking the middle of 1870, that is taking the very highest in the seventies; we always look upon the seventies as exceptional. Comparing prices, when I began farming first, 45 years ago, prices are very nearly as good now as they were then, but the expenses have enormously increased since.

9546. You are speaking of the present as compared with 45 years ago?—Yes, down along the last two decades, perhaps.

9547. We must go at it by degrees; you say, as compared with when you commenced farming, prices are now about the same?—They are now about the same, but excuse me, wheat is much lower; other things about the same, pigs higher, butter higher, and so on.

9548. But expenses have enormously increased?—Enormously.

Mr. *Dillon*—continued.

9549. To what extent have wages gone up?—I think double.

9550. Since you commenced farming, when prices were about the same, the expenses are about double. Now come down to the seventies, and I will explain to you in a moment the reason why I ask you how farming compared in the seventies with your present experience. How do prices compare, roughly speaking?—I think they are a third higher, perhaps; perhaps a fourth, I would be safe in saying.

9551. All round?—No, stock is; but corn and other produce have not fallen so much. The stock was enormously high in the seventies; in fact, men were turning money hand over hand.

9552. You have four or five farms?—I have five farms.

9553. Do you keep a regular account?—Yes.

9554. Can you prepare for the Committee a statement, or would you object to prepare for the Committee a statement of your net profits on one of these farms?—No, I cannot. You know I farm them altogether. You have your out-lying farm from which to send out your stock to relieve the home farm. I could only separate two; I could not separate them in the way that you suggest.

9555. That is rather perhaps a question you may object to answer. Could you give us a return of your labour bill during a number of years?—No, not off-hand.

9556. I mean can you prepare such a thing for the Committee?—Oh, yes.

9557. You have stated that you keep regular books—that is a thing as to which we do not easily get a skilled witness before us in occupation as a farmer?—The only difficulty in producing my labour account would be, that a good deal of it has been more or less spent on improving. I do not believe in having a farm unless you are improving it, and it would be higher perhaps than that of the working farmer; and I might make one other remark, the small farmers are not so much affected as the large ones.

9558. Why is that?—Because the large farmer has to hire his labour, the small farmer has no hired labour, it is all done by his family; if you are making out the expense, it comes to the same thing, but he is in a better position, as farming generally goes in Ireland, in County Cork.

9559. Would not you say he suffered more in the price of young stock?—No, he has not. You see small industries are very important to the small farmer, but they are a bagatelle to the large one.

9560. What do you mean by that?—Fowls and potatoes and all those things that a small farmer sells are a bagatelle to the large farmer, but they are very important to the small farmer.

9561. You say that in fixing a fair rent prices entered largely into your calculation?—Certainly.

9562. Have you got present to your mind any period over which you consider prices. I mean in fixing rents you do not consider only the prices of a particular year?—Oh, no.

Mr. *Dillon*—continued.

9563. Is there any period?—About five or six years.

9564. Therefore in fixing rents in 1882 and 1883 you would have looked back five or six years?—Well I was not fixing rents then.

9565. Under your system you would have done so?—Yes.

9566. Does it not occur to you as being a dangerous thing in fixing a fair rent to fix it for 15 years on the prices of five years in view of the great fluctuations in prices that have occurred?—I agree with you, but it is impossible to strike out any system whereby one could avoid it, at least in my mind.

9567. Unless you shorten the period?—I do think it would be most disastrous to do that; it would unsettle the tenants. They settle down to labour when their rents are fixed, and after all that is very important.

9568. Do you think a man settles down if his rent is too high; he may settle down in more senses than one?—That cuts both ways, because prices may rise; we are always expecting that we are at the lowest prices.

9569. It may cut two ways, but we know the way that it is cutting now; you know the way, too?—Yes.

Mr. *Sexton.*

9570. If prices rose, would it unsettle the landlords to get rents raised?—There it is, you see, but if you had five year' terms, it would be very disastrous to the tenant if the landlord could come in every five years, and say, "I want to raise the rents."

9571. That would not unsettle the landlord, I think?—Probably not.

Mr. *Dillon.*

9572. We have heard of wilful deterioration. I want to ask you, as a practical farmer: Do you think it would pay a man as an operation to deteriorate his land for the purpose of getting his fair rent fixed?—No, it would not.

9573. Even if he got the benefit in that case?—It would not.

9574. Would it not cost him a great deal more to bring his land back into heart; would not he lose a good deal more than he would gain?—Certainly.

9575. Therefore is there anything in the point of tenants deteriorating their land wilfully for the purpose of getting their rents lowered?—The general deterioration is allowing furze to spread on the land; after a few years furze spreads enormously, and if a tenant thinks he is going to have his land in court in two years he will not keep the furze down; there are large quantities in West Cork covered over with furze.

9576. Do you think he would profit by deteriorating his land?—I believe he loses.

9577. Therefore, even if he was guilty of that dishonesty, he would lose by the dishonesty?—Yes.

9578. I do not like to ask you too personal a question, but do you find farming yourself now a profitable business?—Well, it is not a business you

Mr. *Dillon*—continued.

you can make money of, but I find farming pays. I do not say it pays with the enormous trouble of attending to the farm.

9579. What do you mean by paying; would it enable you to pay the same rents as were paid 10 years ago?—No, not to make a profit now; the consequence is that in calculating we always take that into account.

Mr. *Hayes Fisher.*

9580. You said you very frequently fixed rents yourself outside?—By agreement; yes.

9581. Did you fix those rents between 1881 and 1884?—No, I did not.

9582. In fixing those rents, you took into consideration the size of the holding, the quality of the land, cattle, situation, aspect, propinquity to markets, and things of that kind. Did you also take into consideration the amount of county cess and the poor rates?—Oh, certainly; that is one of the questions we always ask a tenant, what the county cess is, and who pays it; sometimes the landlord pays half, but usually the tenant pays all.

9583. If the county cess were high would you take that into consideration and fix the rent at rather a lower amount?—Of course.

9584. On the subject of wages, it is not the fact that on the great majority of holdings there is no wage-paid labour, that the tenant and his family work those holdings themselves?—Yes, all the small holdings, say, with rents under 20*l.* a year.

9585. Where the rent is under 20*l.* a year?—Yes, it is all done by the tenant.

9586. Therefore, in those cases where the rent is under 20*l.* a year, it would be true, I suppose, that these would not be affected by the fact that wages had increased?—It would.

9587. You told us that pretty often drains had been made useless through the neglect of the tenant, did you not?—Yes.

9588. That would, of course, cause a deterioration and depreciation of the land?—Yes.

9589. Would you fix a lower rent on account of that, or how would you deal with it?—I fix the rent on the land as I find it. Of course, if the drains had been kept clear, I should have put a higher rent on it for being in a better condition.

9590. Therefore if a tenant had, whether wilfully or through neglect, or through bad farming, or through ignorance, deteriorated the value of his land, the landlord ought to be the sufferer?—Yes, it is not wilful in the matter of drains, it is neglect.

9591. On the point of 15 years' revision of rents, on the whole what would you be prepared to recommend, seven years, or 10 years, or 15 years?—Well, really, I think it would be better to let the law remain as it is, 15 years, and take the chance of a rise or fall of price, to allow the tenants to steady down. As a valuer I speak against myself; it would be better to value them every five years so far as I am personally concerned.

Mr. *Sexton.*

9592. I think you said there are not many appeals from your valuations?—No, not many.

9593. Have you examined the facts?—Well, I see them in the list of appeals.

9594. I also have looked at the list, and I find that the total number of cases heard in the county court since the passing of the Act was 1,043, and that there were 684 appeals?—You surprise me. I hardly think all those came to appeal, though they came before the Appeal Court in its list. A tenant often appeals and then he withdraws. Are you able to tell whether those are landlords' or tenants' appeals?

9595. I am speaking of all appeals from the court?—You surprise me.

9596. I was surprised myself after your evidence. Now in the last year I find that the number of cases tried at Cork was 62; is that about what you would think it was?—I should think about. I think that is low. I think there are fewer cases coming in.

9597. How is it that that business is so trifling?—I cannot tell you.

9598. And in the same period there were 52 appeals, 60 cases having been heard?—Fifty-two out of the 60?

9599. Not necessarily out of the 60, but in the same period?—Yes.

9600. That is a large proportion, is it not?—Yes.

9601. Larger than you thought it was?—Yes.

9602. Anyhow it is a far larger proportion of appeals than you suspected to exist?—Yes.

9603. And you are unable to explain the very trivial character of the business done in the county courts generally?—I am. I think it is very probable that it is because of the usual course of transferring the cases to the Land Commission.

9604. That would not account for it; we know that only one-third of the cases are transferred; if the number had originally been large, the two-thirds would still be a large number?—Yes.

9605. Are you acquainted with the practice of the Land Commission in transferring cases; do you think they are transferred simply because the landlord wants them transferred?—The tenant has the power of resisting; there is a regular rule; he must show, or the landlord must show, cause.

9606. The tenant first claims to have a fair rent fixed?—Yes.

9607. Then the landlord claims to have it transferred?—Yes.

9608. Then unless the tenant shows cause, the case is transferred?—The tenant makes the landlord show cause, I think.

9609. No, unless the tenant shows cause, the case is transferred?—First, the landlord must show cause why he wants to transfer it.

9610. I think not; he simply asks to have it transferred?—Perhaps you are right.

9611. Then the tenant must show cause if he wishes it not to be transferred?—Yes.

9612. I do not expect you to give evidence upon this point, I simply want to get it out: in practice in the Land Commission, the landlord never

Mr. *Sexton*—continued.

never does show cause why the case is transferred; I think he does not show cause?—No; I should think not.

9613. Have you ever fixed true value under the first section of the Act?—No; I have never been asked.

9614. But you have fixed the specified value?—Twice; in the cases I mentioned.

9615. Do I understand that in fixing a specified value in the case of fixing a fair rent you are bound to act upon the same principle as if you were not fixing true value under the first section?—Yes.

9616. I understood you to say that you fixed the specified value at five years and seven years of the fair rent?—One was five, the other was seven.

9617. Of the fair rent?—Of the fair rent.

9618. The first section says: "The tenant for the time being of every holding not hereinafter specially excepted from the provisions of this Act may sell his tenancy for the best price that can be got for the same"?—Yes.

9619. Did you estimate at all what price these two men would have obtained for those farms if they had been allowed to sell them in the open market?—No; I believe they would have brought very little; they were very poor farms naturally, and they had been greatly neglected. I do not think they would have got what we gave them.

9620. Oh, indeed?—No, I do not; they were greatly pleased at getting so much.

9621. Did you approximate the price to what they would have got in the open market?—No, I did not; I looked upon it as though both of them had really no interest in the farm, and we thought we did fairly for them.

9622. Had they not had a fair rent fixed?—They had.

9623. Had not they the perpetual right of occupancy?—Yes, but it would have taken a lot of money to bring up those farms. They had had corn crop after corn crop on them, and had been reduced. They got out very well we thought.

9624. Do I understand you to say, then, that the value of the farms had been so far brought down by deterioration as to extinguish the value of the legal interest and the permanent right to occupy?—I believe so.

9625. Saying that is one thing, but I presume you do not intend to throw any doubt upon the legal right of the tenant to perpetual occupation?—Oh, no; these were exceptional cases.

9626. If you were to fix specified value in a case where there had been ordinary improvements, and where the land was in an ordinary position, how would you fix it?—I would give the tenant the value of his improvements.

9627. You have spoken of the "desire" and "thirst" for land in Ireland, have you not?—Yes.

9628. Those are very expressive words, but not perhaps more expressive or more weighty than the fact deserves. If there be this "desire" and "thirst" for land in Ireland, what really fixes the value in the mind of the purchaser buying the tenant-right of the farm is not so much the condition of the farm at the moment as

Mr. *Sexton*—continued.

the right to occupy it in the future without limit of time, is not that so?—It ought to be, but I do not think he considers it. I think he considers simply the opponents, and he just bids. I could tell you of an instance of 22 years' purchase being given for a tenant's interest in one case, and in another 24, simply because there were opponents. They never consider what the true value is.

9629. Would not a bidder give a very different figure for a farm knowing he could stay there for ever at a fair rent than the figure he would give for a farm from which he knew he could be turned out?—Yes, certainly.

9630. That is what constitutes the legal value of the interest, is it not?—Yes.

9631. Then in fixing true value, you would endeavour, as I understand, to approximate to, what the law says the tenant ought to get, "the best price that can be got for the same," and the low value you fixed in this particular case was due to special circumstances?—That would be an impossibility, because no one is more surprised than the tenant himself, when he puts the farm into the market, at the price he gets. For a little farm of 10 acres, let at 4*l.* 10*s.* per annum, I saw a tenant get 90*l.*

9632. That was 20 years' purchase?—Yes.

9633. That is not very unusual?—That is for the tenant's interest; I suppose the landlord would not get more than about 40*l.*

9634. Mr. Doyle acts in the same district as yourself in Cork, does not he?—Yes.

9635. You think 20 years' purchase not much; are not some much higher?—Yes, they go I know to 40 years.

9636. Why should this tenant have been surprised at getting 20 then; why should he be surprised at getting less than what is often given?—Because the land was so far deteriorated that it was not worth a third of it.

9637. You are again going down to the special circumstances of the case?—A good deal depends upon the district; I quote an ordinary case: In West Cork you will get far more for a farm than in East Cork; and a small farm will bring more in proportion than a large one.

9638. Would it be fair to compel the tenant to sell the value of his tenancy to the landlord at a fraction of the price he would get in the open market?—I think he ought to be allowed to get the highest price he can; I do not believe in the landlord's power of pre-emption.

9639. Nor do I, and I never could understand it. I presume you do not understand why the landlord should be able to buy at a lower price than any other man and sell to-morrow at the full price to someone else?—The tenant ought to be able to sell his interest, but the landlord should have power to object to a tenant; he ought to have power to object.

Chairman.

9640. He cannot object arbitrarily?—Oh, no, not arbitrarily; he must show cause.

Mr. *Sexton.*

9641. Are you aware whether he does successfully object in many cases?—He very seldom steps forward; he is only too glad to get a new tenant,

Mr. *Sexton*—continued.

tenant, and the more the man gives the better for the landlord, because he has more security for the land then.

9642. You have five farms, I understand?—Yes.

9643. All of them within the jurisdiction of the Cork County Court?—Yes, in the neighbourhood.

9644. Farming does not pay, you say?—I did not say it did not pay; you cannot make money; you cannot save money on farming.

9645. That seems to suggest that you can just live on it?—Yes.

9646. If you had not five farms, but only one, do you think you could live on that one as things go at present?—That all depends upon the extent and character of it; I could, of course, as a farmer, if I just entirely gave my time up to it.

9647. You must be doing very well if you can live on one of them, and have five, and all of them are paying. Are they large or small?—About 700 acres in the lot.

9648. Are they near each other?—No, they are not; some consists of poor mountain land and other portions are very good land.

9649. What is your tenure of them?—Two are rents fixed in the court, judicial rents; other two I hold, one on lease, and the other on a yearly tenancy; another I hold is my own land.

9650. One you own yourself?—Yes, a small quantity.

9651. Of the four two are held on lease?—Two are held on lease.

9652. Two are held on lease and two on a judicial tenure?—Yes.

9653. When did you get your rents fixed in these two cases?—They were fixed before I got them; I purchased the interest.

9654. When?—About two years ago.

9655. When were the rents fixed, do you know?—No, I could not tell you.

9656. In the early years?—No, a couple of years before.

9657. Do you know what reduction was given off the old rents?—I could not tell you from memory now.

9658. Do you own any land as a landlord?—Yes, about 140 acres I let.

9659. Have you any tenants?—Eight.

9660. Have they had rents fixed?—Two of them have had them fixed; as to the others, I reduced their rents.

9661. What abatement did you give; what reduction?—Well, it just touches the subject in hand, because in 1884 I gave them 10 per cent. and now I am giving them up to 25—one man 30; I reduced them two years after.

9662. One man 30, and one 25?—Yes.

9663. Every year?—Every year. It is a settled thing.

9664. And they accept that instead of going into court?—Yes.

9665. Two of them, you say, went into court?—Two of them went into court.

9666. What happened to them?—One got 25 (24½), and the other got 26.

9667. Did they go into the court of a Sub-Commission?—Into the court of a Sub-Commission; small farms.

Mr. *Sexton*—continued.

9668. How long have you been valuing land?—Before the Land Court I have valued land, and all through I have been valuing, more or less.

9669. You have been 45 years farming?—I have.

9670. I suppose you began to value land a great many years ago?—Yes; I did very little valuing then, but I have valued farms before the time of the Land Court.

9671. Is your capacity to value it derived from your personal experience as a farmer?—Principally.

9672. And you valued before the Act of 1870?—I did.

9673. Do you value now on the same principle as you did when you began?—Not so far as valuation of course goes with the prices.

9674. But on the same principles?—Oh, yes; as to what value the land would be; I tried to put a "live-and-let-live" rent upon the land. Of course one gets experience as one goes on.

9675. Do you calculate the cost of labour and outgoings; as I understand you, you fix the rent at about three times that amount on a tillage holding?—Yes, on a tillage holding about a third for rent; afterwards there comes in the question of improvements; the claim for improvements.

9676. In the case of pasture, after deducting deterioration you divide the rest between landlord and tenant?—I take off a pound on deterioration and then divide the rest; it comes to about two-fifths; some valuers fix it at two-fifths.

9677. You think that carries out the principle of what we have heard; that you fix rent on what you think a solvent person would reasonably give from year to year?—Yes.

9678. The rents that you have reduced or operated upon were the old rents before 1870?—Some.

9679. Most; all nearly?—I should think so; yes.

9680. Were they competition rents?—I really could not tell.

9681. You have been farming 45 years?—Yes.

9682. That brings us back to 1848?—Yes.

9683. Twenty-two years before the Act of 1870?—Yes.

9684. Now, I should like you to consider and answer if you can whether all the rents that prevailed in Ireland before the Act of 1870 was passed were competition rents: there was nothing to prevent the landlord getting the highest rent he could up to that time, or up to 1881?—I should think they were.

9685. Yes, I should think so also. Very well, the rents you have been acting upon were the old competition rents fixed by the pleasure of the landlord at a time when he could turn the tenant out at any time he pleased, and bring in another man?—Yes, principally.

9686. And those rents, of course, were fixed without any regard to the improvements of the tenant?—Yes.

9687. They were competition rents for the holding as it stood, assuming the tenant had

Mr. *Sexton*—continued.

made no improvements?—I should think so. Of course that is only an opinion, but that is my opinion.

9688. You assume it because there was nothing to make it otherwise?—Yes, exactly.

9689. Therefore these rents were not fixed upon any improvements made by the tenant?—No, I should think not.

9690. Now you fix the rents, and in the first place you calculate what a new-comer, a solvent person, could reasonably give from year to year on that holding; that is to say, you exclude insolvent or rash competition, you make it reasonable competition?—Yes.

9691. As much as a solvent person would reasonably give?—Exactly.

9692. That is to say, you fix the fair rent at as much as could be got upon a competition beween solvent and reasonable men?—Well, it is a point I would consider.

9693. Do you?—No; it is a difficult question now to put, because it never entered into my mind putting it thus.

9694. I am sure a man of your keen intelligence cannot have been valuing land so many years without thinking of it?—My point is in valuing land to put upon it the rent that a tenant can fairly pay and make his profit out of it. I could not just answer the other question.

9695. It is not the tenant merely but anyone?—Yes, anyone.

9696. The rent is to be such as anyone could fairly give and make a fair profit?—Yes.

9697. That is what I call a solvent competition rent?—Yes.

9698. Then you deduct from that, as you are instructed by the law, the full value of the tenant's buildings and an allowance for all other improvements?—Oh, no; I do not value the buildings at all if the tenants make them.

9699. That is the same thing?—It is the same thing.

9700. They are left out of the rent altogether?—Yes.

9701. Then you make an allowance, as to which I have asked one or two questions, in respect to all other improvements, the buildings made by the tenants, is not that so?—Yes; they do not come into my calculation at all, the buildings, unless the landlord makes them. I just value the land as if the tenant was living on the adjoining farm.

9702. Just so; as if a stranger wanted to come in and take it?—If he was living on an adjoining farm and working that farm *ex* buildings.

9703. But you do not make the rent less for the tenant than you do for any other man?—Oh, no.

9704. The net result of it all is, after 13 years, that this lot of competition rents, fixed without any regard to improvements, and now reduced by the principle of solvent competition and the value of the tenant's improvements, have been reduced on the average about 20 per cent. throughout Ireland?—I believe that is so.

9705. It seems very strange that in England, where the tenants have no improvements, no legal right of occupancy whatever, the landlords have at the same time reduced the rents about

Mr. *Sexton*—continued.

40 per cent.?—No, only in parts; I have been in Devonshire, and have gone through farms there and mixed with the farmers, and I found that the rents had not gone down anything like that; it was not tillage like that in the County Cork, but good tillage; the rents there have not been reduced more than 20 per cent.; in Essex they have gone down completely.

9706. Would you not think it strange that the rents have gone down in England twice as much by voluntary action, although in England the tenant has no permanent right of occupancy?—I would; I know that in Essex they have gone down double because there they are wheat lands and only wheat.

9707. About the statutory term you say you would fix the prices upon an average of five or six years before?—Yes, about five or six years; and then we look forward to whether they will fall or not; I do not expect the prices will rise, but I do not think they will fall more.

9708. You act in some cases as a sort of prophet in fixing fair rent?—Yes.

9709. If you base your prophesy upon the facts of five or six years would it not be reasonable to limit your prophesy to a similar period in its practical operation on the tenant?—Yes, I think it would; but that again cuts in two ways, because prices may rise.

9710. I suggest to you that justice never unsettles men; taking the community all round the administering of justice never unsettles men?—Certainly.

9711. And that if you make people go on paying rents that are obviously too high or receiving rents that are obviously too low for a great number of years you do a great deal more towards unsettling them than you do if you open a court and settle the matter at once?—Quite right.

9712. I suggest to you, therefore, that it would be more convenient that you should have a short term, and I suggest to you that Parliament would not have been at the trouble of the Act of 1887 to adjust the rents fixed in the year 1881 if we had had a term of seven years; you remember, of course, that Parliament had to intervene?—Yes. If rents could be adjusted every five or six years, in some simple mode of course, it would be far preferable; but the difficulty is how to do it. If every six or seven years we are to go through all this process, excuse me, but I do think it unsettles men.

9713. Of course, at the outset, when questions of improvement were in debate and dispute, very elaborate processes were necessary; but it might be possible at future fixing of rent to deal with the matter more simply?—If such a mode could be hit upon it would be preferable.

9714. Where the landlord and the tenant agreed upon the improvements, they might at least be allowed to have one or two valuers down to see whether they could accept the valuation; then if either of them was dissatisfied he might go on to the Sub-Commission Court, or to your court, and then I would like to ask you whether you think that court might not be final in regard to value; to save the cost of appeals?—That would be far better; that would be an appeal.

9715. That

Mr. *Sexton*—continued.

9715. That would be in that case an appeal?—Yes, that would be feasible.

9716. So that where the landlord admitted the right of the tenant to have the rent fixed at all, and where they agreed upon the improvements, then if they were not satisfied with the two valuers they might at least be satisfied with the sub-court?—Yes, that would be a great advantage.

9717. How is it that the form of report which you use differs so much from the form in use in the Sub-Commissions?—I have not an idea; our schedules differ; our reports that we send in differ, they are sent down to us printed.

9718. Will you look at the form?—Yes, I have it before me.

9719. Is that the one you use?—*This* is the one we use.

9720. Turn to the schedule. For instance, in regard to grass lands there are five classes in your form, and seven, I think, in the form used by the Sub-Commission. You have only five there, I think?—Yes.

9721. I have here seven in the form used by the Sub-Commissions?—I cannot tell you; they are all sent to us, of course; that is outside us, but I find it put upon me; for instance, in comparing them, I put "very" or "extreme," or something of that kind.

9722. You act entirely apparently upon one basis, and the sub-courts on another, though you are both fixing a fair rent?—Yes.

9723. There are seven classes of grass land, and five classes of land in tillage; has this form been in use all the time you have been valuing?—All the time; I think since the county court; the other was changed, but ours was not; the Land Commissioners changed theirs, but this is not changed.

9724. Then you answer some 14 questions, but none of them is identical with any of the questions contained in the reports used in the Sub-Commissions?—That is the case.

9725. Who dictated this form of report that you use?—I do not know; that is outside us.

9726. If it were the Land Commission it would appear that they have allowed to remain in use in the county courts a form originally provided at the time of the passing of the Act, and have given an amended series of returns to the sub-courts which they have not given to you?—Yes.

9727. I see, for instance, here, that the Sub-Commissioners have to report as to the situation of the farm in regard to county roads; you have no such question?—No, we have not.

9728. Do you consider proximity to county roads?—We do.

9729. How do you deal with it?—Well, we generally take no notice of it except when the tenant has a very difficult approach to his farm; then we take off something for the difficulty of approach.

9730. If he is very near the road, how then?—We do not notice it; he ought to have a road near him; we do not notice that.

9731. We have been told that if he is near a road his rent is higher than if he is far away from a road?—I do not know; I have attended a good many Sub-Commissioners too, and I have not seen them take notice of it; but we make an allowance for difficulties; sometimes the man is a mile from a county road, with a bad "boreen" as we call it; and of course we must allow him something for his difficulty; sometimes he is not within two miles of a county road.

9732. The evidence before us rather leads us to infer that proximity to the county road is an advantage to the landlord in the rent?—I can only speak for myself in that. I do not put on more rent for proximity to a county road, for I believe every tenant ought to have a county road near him.

9733. Of course you know really the tenants have paid for the cost of the county roads?—Yes.

9734. And in one point of view it may almost be said the county roads are improvements made by the tenants; is not that so?—When the tenant pays the county cess it is so; but when the landlord pays half it is not so, because he pays half.

9735. The landlord pays half for some tenancies created since 1870?—Yes, and all through the landlord at times paid half in 1870, and before that too.

9736. In a small proportion of cases, I think?—Yes.

9737. A very small proportion of cases?—Yes.

9738. Without going on to the farm, what material have you in your hands; you have the originating notice with the schedule on the back of it?—Yes.

9739. Anything else?—The map and the scale in my hand, I scale each field as I go on, roughly, and my note-book.

9740. You inform the landlord and tenant of your visit?—I inform them three days before if possible; sometimes two. I have printed notices that I send out.

9741. Who generally meets you there?—The agent generally.

9742. And the tenant?—And the tenant; indeed on small holdings the agent seldom troubles to come.

9743. What do you question them about?—Only as to improvements; and I examine their stock, and learn a good deal from the stock of the farm as to its character, not the number of it; I do not take much note of that, but I do of the quality.

9744. Do you trouble yourself at all about legal questions at the time?—Oh, no; I leave that to the judge.

9745. I understood you to say that if you found reclamation, and that if your map showed that the reclamation was there in 1848, you would put rent upon it?—I do, yes.

9746. You seem to reverse the presumption of the law. What the law says is that the presumption shall be that the tenant made it, always except the contrary is proved. You seem rather to take it that in certain cases the presumption must be that the landlord made it?—Well, if the county court judge instructed me to act thus I would change my mode.

9747. Has the judge told you that when the

Mr. *Sexton*—continued.

reclamation is there on your map you must charge rent on it?—No; I show him on the map and I mark it with my pencil. If there were half-a-dozen acres there reclaimed I mark them with my pencil as reclaimed, and show it to the judge to show that those acres were certainly reclaimed.

9748. It was marked on the map?—If I find it unreclaimed on the map I mark it so.

9749. If you find it unreclaimed at the date of the map, and reclaimed when you go on the farm you give the tenant the advantage of it?—Exactly; I mark it off, and I show that to the judge.

9750. You do it upon the assumption that it was done since 1850?—Yes.

9751. And the tenant would require no proof there?—No; the tenant would require no proof. I question the tenant as to what he has done, and you judge of what you see; you see boulders taken out of the field up in the fences and you thus test it.

9752. By your practice in that case, finding a reclamation in your map of 1848, and charging full rent upon it as though the landlord had done it, do not you really believe that you transfer the property of the tenant to the landlord?—I do not know that I do look upon it thus, because if that had been done 50 years before, the tenant would have had the profit of it for 50 years.

9753. The profit of it?—Yes, the profit of that reclaimed land. He has got it at a very low rent, I suppose.

9754. You "suppose" that?—Yes.

9755. But do not you know that you are dealing with competition rents over all these holdings; the rents you reduce are competition rents, as you have told us?—No, I have not considered it in that light.

9756. If you found a house upon your map in 1848, what would you do with that?—I do not look at the houses except, as I said, to take a note of them in case the landlord claims them. The presumption is that the houses belong to the tenants, because in 99 cases out of 100 they do, and then we leave it to the landlord to put in his claim.

9757. Let us examine the basis of the presumption. Is it any more likely that the tenant made the house which is on your map in 1848 than that he reclaimed land before 1848?—I think so, because the reclamation of land only affects peculiar parts of County Cork; in some portions of County Cork there is not an acre reclaimed; it is good land.

9758. I think you miss my point. Is it not just as reasonable when you find a house on reclaimed land prior to 1848, to presume that the tenant reclaimed the land, to presume that he built the house?—Perhaps so.

9759. Why then do you allow the house to the landlord when there is not the reclamation allowed; why do not you allow it to belong to the tenant, the fact being, as you know, that he did this everywhere in Ireland?—Yes, there is something in that.

9760. There is a good deal, I think, in it?—Yes.

Mr. *Sexton*—continued.

9761. You value the land apart from the buildings, do not you?—Yes.

9762. Will you tell me how that system arose; Judge O'Hagan once spoke about it as an "inveterate habit"; how has it arisen that in Ireland the valuers proceed with the valuing of the land apart from the buildings?—I believe it is, as a rule, because the tenants have built the houses and they could not think of putting rent on. Suppose I value a farm with a house, I have then to take off the value of the house, and surely it comes to the same thing not to look at the house at all.

9763. That is what we want to know; whether it does come to the same thing; we doubt it very much?—I cannot see any difference.

9764. Take tillage holdings now, what would be the value of the ordinary tillage holding with no buildings on it, how would it differ from a holding with suitable buildings upon it, an ordinary tillage holding?—I did not catch your question.

9765. To what extent does the value of a tillage holding, without any houses on it, differ from the value of the same tillage holding with suitable buildings upon it?—It differs very considerably of course; it depends very much on what is the character of those buildings.

9766. Suppose the buildings on a tillage holding belong to the landlord, and that you first fix the value of the land without the buildings, and then add the value of the buildings without the land, would the two items together come to the same thing as if you had just valued the whole affair as a going concern?—It ought to. I think I had better answer that question about the buildings. If the landlord has erected the buildings we add the value on to the rent for his expenditure.

9767. You estimate what the buildings cost him?—We estimate what the buildings cost him; if they are recent, say within the last five or six years, we put on 4 per cent.; if 20, 30, or 40 years we estimate the present value of them of course; they may not be worth perhaps half what they cost, or perhaps a third; and you must, when you find them in a very bad state, put nothing on them.

9768. You add whatever is their letting value, do not you?—Yes.

9769. Because the tenant has no interest in them; do you think the letting value of that land belongs entirely to the landlord?—Yes.

9770. When you are valuing the land, as you say, apart from the buildings, does not the fact of the presence of the buildings upon the holding form an element in the value you put upon the land?—Certainly not; as I said before, I value them as if the man lived on the adjoining farm and worked that with his own.

9771. Do you mean to say you value a tillage holding just as if it was bare land with no buildings?—Exactly, and then put on the buildings afterwards if they are the landlord's. Excuse me, but I do think it comes to the same thing as if I value the farm with the buildings. Suppose I value a farm at 50*l.* a year, there are buildings on it, and I say it is worth 60*l.*; I have to take off

Mr. *Sexton*—continued.

off the 10*l.* afterwards, and it comes to about the same thing.

9772. Certainly, if we could understand that that was really the process, and that the two items added together, the value of the land and the value of the buildings, when the landlord's were the same as the amount at which you valued the whole concern as a going concern with the buildings?—It ought to be; it is a failure in my valuing if I do not do it thus.

9773. But you do not tell the tenant at what, in your judgment, you fixed the full value of the holding; you only tell him the fair rent?—I only estimated the fair rent.

2774. You do not distinguish between the full letting value of the holding and the value of the buildings in any document open to him?—I do in my report. I say "buildings belong to tenant." I put opposite to that, "Tenant claims all." Then if the landlord in court proves that he has advanced money upon them, that is added on.

9775. But according to your valuation, the tenant has never understood what value is put on his buildings?—Never. I ask, "Who built those?" The tenant says, "I built them?" "What did the landlord give towards them?" "Nothing." Then I put no rent on them; but I take a note of them to enable me to answer the question if it is put to me by the judge.

9776. Is it not rather a curious coincidence that when the landlord owns the buildings you let the landlord know how much is the value of the buildings and how much you add for the value in the rent, but that when the tenant makes the buildings you let him know nothing about the value?—I do not let the landlord know anything.

9777. I do not say you let him know anything, but your report tells the landlord how much is added on for his buildings?—Yes.

9778. If the tenant makes the buildings he is not told?—We put nothing on.

9779. That is exactly what we complain of?—I only fill up my return.

9780. I am not blaming you; I am only analysing the system under which you act. The system appears to be that if he builds a house the landlord is told what is the annual value of his buildings?—Quite right.

9781. But if the tenant puts up buildings he is left in the dark?—Quite right.

9782. Do you see any objection to a system by which you should value a holding as a going concern, land and buildings, whether the buildings were built by the landlord or the tenant, and then tell everybody concerned how much value you attribute to the buildings if they are the landlord's, and how much you leave out of the rent if they are the tenant's?—I see no objection, except that personally it would put me into a great difficulty, because, being in the habit of acting the other way, I should change all the calculations in my mind.

9783. Exactly; that is what Judge O'Hagan said, that it was an "inveterate habit"; but if it would give greater satisfaction to the parties, and you could state the conclusions on which you arrive at the fair rent, do not you think it had better be done?—I should try to do it, of course, if I was directed to do it, but I would find a difficulty in doing it.

9784. How do you deal with improvements made on the soil which do not touch the latent capacity of the soil; fences, walls, gates, roads, plenty of shelter?—I put on nothing for fences unless I see improvements. Fences are perfectly useless unless they are improvements on the piece of land, because one man throws down a fence and makes a big field, another puts up a fence and makes a small field; it is a matter of fancy and I never look at it.

9785. You value the holding?—I value the holding field by field, and as I go on the tenant says, "I made such and such a fence," he wants to get something for that; but then another tenant comes along and he throws it down. It is a matter of taste.

9786. You think it does not add to the letting value?—Not at all.

9787. If you find any improvement that adds to the letting value on the soil, and not in the soil, and which therefore does not touch the latent capacity of the soil, do you allow the tenant the full letting value for that improvement, or put anything on to the rent?—You must specify. I have answered some questions about that.

9788. I will specify fences; good hedges, walls, gates, or planting?—Internal fences I do not value; external fences I do. If there is an external fence I value that.

9789. Round the farm?—Yes; or reclamation, taking in a piece of mountain, because that is a necessary thing in reclamation.

9790. It adds to the letting value?—I think I ought to state something about this reclamation business. On some reclamations I add on no rent.

9791. On some reclamations?—On some reclamations I add on no rent.

9792. I will come to that in a moment. I was now on the improvements on the soil, not in the soil?—I do not value anything except external fences, where it takes in mountain, or something of that kind.

9793. Suppose a farm road?—I value that.

9794. What happens to that?—I put down that as an improvement.

9795. What do you do with the letting value resulting from it? You first value the holding as it stands?—Yes.

9796. Therefore the value of the road is in the first value?—No, it is not.

9797. Why not?—Because that road is an outside thing; suppose a field is worth 10*s.* an acre I value it at 10*s.* an acre, no matter whether the road is there or not, and if the tenant has made the road and it is one which is worth anything I put it down as an improvement.

9798. I want to know how that affects the rent. The tenant has expended money on the road; how does it affect the rent?—It facilitates his working the farm and making money out of the farm.

9799. In valuing the holding as it stands, with the road upon it, of course you value the holding as it stands with the annual value of that road?—No;

Mr. *Sexton*—continued.

—No; I value the field as if there was no road there. I value every field, forgetting roads altogether. I value each field at its intrinsic value; if it is worth 10*s.* I value it at 10*s.*; if it is worth 15*s.* I value it at 15*s.*; if afterwards the tenant shows me the road I will put it down and give him credit for it.

9800. That is altogether?—That is my system.

9801. It seems to me axiomatic with all the valuers that they value the holding as it stands with the improvements and everything on it except the buildings?—I do not think you will find many valuers act thus.

9802. Let us understand your system. First you leave out the buildings. Do you leave out all the other improvements on the soil not in the soil, except the external hedge, for reclamation, and the farm road?—Farm road and fences. I know of no other external.

9803. Gates?—No; I do not value gates.

9804. You would not?—No. If they were something very substantial I might, but we all know what Irish gates are.

9805. Some of them are very good?—Sometimes. I very seldom fix a value on these.

9806. They are an improvement, I think?—They are; but they do not add to the letting value of the farm. I look upon that as being just as necessary as a plough.

9807. I think we must come to this result: you treat improvements on the soil not in it as you would buildings; you ignore them?—No, I do not; I have told you two instances.

9808. You spoke of an external hedge?—No other comes to my memory.

9809. Is there anything else?—Roads and fences; no, I think nothing more.

9810. If you are sure you ignore them, of course the tenant does not pay rent upon them?—No.

9811. But unless you are very sure of that it is quite possible that he does?—I do not see what they are.

9812. If in fixing a rent on the holding as it stands in the first place you include any of these things and do not take them out after, then the tenant is the loser?—When looking at a field I consider nothing but the value of the soil, then afterwards I look to his claims.

9813. Improvements in the soil, reclamation and drainage, we have heard from you that if they are made more than 48 years the tenant loses them, the full value is thrown into the rent?—Yes.

9814. If they are made since, what do you do with them; you first value them into the rent as part of the holding as it stands?—I will give you a couple of typical cases. A man fences off a piece of a mountain; he spends on that 7*l.* or 8*l.* an acre; I do not value that at more than a shilling an acre previously, it being part of the mountain

9815. You are on permanent reclamation of waste land now?—Yes. When I came to value that, I find that though he has spent 8*l.* an acre on it perhaps, I do not value it at that, it is only worth 6*s.*

9816. Six shillings a year?—Six shillings an acre. Eight pounds may represent 8*s.* an acre; and my system is, whether right or wrong, to let that run with the unreclaimed land at 1*s.* an acre. It came before the Appeal Court at the last Killarney Assizes.

9817. I think you would be undoubtedly justified in that; that is where the result of the improvement may be said to be less than the cost?—Yes.

9818. That is to say, the letting value resulting from it is not equivalent to the cost?—Taking off his improvement, I just let it run.

9819. Now we will take the other case which may not be so frequent, but it is frequent enough to be important, that is, where the letting value resulting from the improvement is worth more than the cost?—Take a case where land is worth 4*s.* an acre, and the tenant expends 8*s.* upon it. When it is worth 15 shillings, I value it at 15 shillings. I give him credit then for 8*l.*, and I take off 8*s.* an acre.

9820. You give him 5 per cent.?—Yes.

9821. And 4*s.* and 8*s.* are 12*s.*?—Yes.

9822. Then you give 5 per cent. to the tenant?—Yes.

Mr. *T. W. Russell.*

9823. Is this an actual case?—Yes, an actual case, a typical case.

Mr. *Sexton.*

9824. You give him 5 per cent. upon the outlay?—I give him 5 per cent. upon the outlay.

9825. You bear in mind that you are only fixing the rent 15 years?—Yes.

9826. That you give him three-fourths of the outlay at the end of the 15 years?—I never consider that. I consider what it is worth, and not what he has expended.

9827. You never ask yourself what that might be in the next statutory term?—No, I leave that to the future.

9828. Do you intend on those lines to repay him the principal, or do you intend it to be interest on it?—Interest on his expenditure. I look upon it thus. But let me explain: I only put a third of that on his rent; the improvement has been three 7's, 21*s.*, and a third of that goes as rent.

9829. Of course if you pay the rent upon the letting value you have disposed of the letting value?—Of course. What I mean is that it does not cover the whole of the profit of the tenant.

9830. No, it is like any other part of the land of the farm?—Yes.

9831. We have to calculate the question whether the allowance is fair upon the same principle as that on which we have to calculate the question whether the rent was fair upon the holding; suppose the next statutory term you made another allowance which would pay him the whole of his capital back, interest you call it?—Yes, on his expenditure.

9832. He goes on getting his interest on his expenditure as long as the improvement adds to the letting value of the holding, does he not; that is your theory?—I did not just catch that.

9833. You

Mr. *Sexton*—continued.

9833. You give him 5 per cent. upon his outlay?—Yes.

9834. And should not he go on getting that interest on his outlay as long as the improvement continues to add to the letting value of the holding?—Yes; now I understand.

9835. The improvement after a certain time ceases to add to the letting value of the holding?—How?

9836. For instance, if the reclamation becomes so exhausted that it has to be made over again, or the drainage becomes worn out and has to be made over again?—Reclamation does not get exhausted if it is fairly treated. Reclaimed land will improve after 15 years more, if it is fairly treated.

9837. Does it not require very constant attendance and care?—Of course it does, but that is tillage.

9838. You treat that as ordinary agriculture?—Yes.

9839. So that no matter how much it cost to make this reclamation, or what trouble it may be to keep it in order from going back to a state of nature, you would never give him any other allowance except what he got in the first instance?—Certainly not; the other is simply his annual regular expenditure in farming.

9840. We have been told that reclamation in Ireland in three years would fall back into furze, a state of nature, unless it was kept constantly taken care of?—Now you are referring to the class of land I spoke of first; that is the case, and it is really a foolish expenditure of a tenant on that class of land; it will go back to nature in three or four years.

9841. Is not 5 per cent. your standard?—Five per cent. I always allow the tenant.

9842. On everything which he is allowed at all?—Yes.

9843. The principle then appears to be that if the expenditure, as proved, adds to the letting value of the holding 5 per cent. during the time when the improvement does add to the letting value of the holding, when it no longer adds it ceases to be an improvement, does it not?—I estimate for 15 years now.

9844. You do not care to go beyond that?—No, it is not my business.

9845. But it would rather seem that your system is to give him interest simply on his capital, but that his capital is never repaid?—His capital is never repaid, but is permanently invested.

9846. If it remains there always in its undiminished value, but its value diminishes from year to year?—I dispute that. Reclaimed land will improve in 15 years, I do not speak of that first class of land; if the land is worth reclaiming it will improve; it will not go back to a state of nature.

9847. Drains do not improve?—Drains if well made will last 40 years.

9848. Whether they do or not, you never get back the capital spent on your improvements?—No.

9849. The ordinary thing is something which gives a man back his outlay at a certain time?—Suppose he sells his farm, he may get it back, perhaps doubled.

9850. If he sold the farm after such a time has

Mr. *Sexton*—continued.

decreased the value of the buildings or drains he would have to suffer the loss of the difference?—We differ about decreasing. I assert that the reclaimed land improves.

9851. You would not say that the buildings get higher in value?—No, not the buildings, they deteriorate.

9852. What sort of questions does the judge ask you when the case is going on in court?—Oh, as the evidence goes forward he tests the evidence. Suppose there was a field the tenant claimed as reclaimed, he would question me upon that; I would point it out to him on the map and tell him what was done upon it. I do not think he asks any questions except with respect to that.

9853. Does the hearing in court usually affect the question of reclamation which you have found upon the map in 1848, which you have disallowed to the tenant, put into the rent, and which the tenant tries to prove was his?—No; because I do not think the tenant ever claims it back.

9854. He is not able to prove it?—No, he will claim his whole farm; the whole of it.

9855. So that this presumption of the law, or rather the absence of presumption, that anything that was done more than 50 years ago was done by the tenant, has that affected the transferring, so far as you know, of the value of the improvement; you suggest he is not able to prove it?—Yes; I suppose you may put it in that way.

9856. You have been a long time a professional valuer?—No, about five years. I have been valuing since the court began for about five years under the county court.

9857. Before the Act of 1881 was passed did you value land?—Yes.

9858. For many years before?—Yes, a very little.

9859. As much as there was?—Yes, I have done a little.

9860. For yourself?—Yes.

9861. For which party did you usually act, for landlord or tenant?—My valuations have been principally for the landlord.

9862. Before the Act of 1881 I mean?—It was arrangements generally of rents.

9863. Re-valuations and so on?—Yes, there was never anything extensive in those matters.

9864. But when you acted it was for the landlord, I understand?—Yes, principally; I very seldom valued for the tenants.

9865. Before the Act of 1870 passed did you value for landlords?—I have acted once or twice for both. I have done very little before 1870; no one has done it in our county.

9866. When you did act before 1870 whom did you act for?—It was for both.

9867. When you did act before 1870 did you raise the rents?—I could not tell really now.

9868. You could not say whether you raised them, reduced them, or confirmed them?—No, I could not just say.

9869. Because our experience here, in evidence, is that any re-valuations of rent which occurred before the passing of the Act of 1881 might as well be called increases; they invari-

Mr. *Sexton*—continued.

ably increased the rent?—That is quite the case, taking it as a rule; I do not think I had many cases of that kind; but it is quite the fact that will suit the case of County Cork.

9870. You think the rents you acted upon before 1870 were rents you probably valued for increase?—Not that I valued, but that were valued. A great many of the cases that have come before any county court have been cases which were raised. There is no doubt that since the sales in the Encumbered Estates Court began men bought properties for the purpose of raising rents, and did raise them.

9871. But a good many who are acting now, as you do for the county court, and others for the Sub-Commissioners, are gentlemen who acted for the landlords before 1870?—Yes; I had no business of that kind.

9872. Those who valued for the landlords before the Act of 1870 valued to increase the rents?—Usually.

9873. And those gentlemen who valued to increase rents up to the Act of 1870 are now employed by the State to reduce the value of those old rents again?—Yes.

9874. To value their own rents?—Yes. I know some of those.

9875. And now, in the case of some of those Sub-Commissioners, they have to inquire whether the rents they fixed themselves before 1870 are too high?—As a rule, and I think you will find as a rule that men are desirous of putting fair rents on.

9876. Your employment in the county court is only casual?—Yes.

9877. You are employed on cases as they arise?—Yes; half-a-dozen are sent down together.

9878. No; 60 in a year?—I am only one of four.

9879. Attached to the Cork court?—Yes.

9880. Do you act in making valuations otherwise?—Yes, except for county court business; I am allowed by the Land Commission to value, but not in county court business.

9881. In county court business you value for the court?—Only.

9882. Outside the county court you value for one of the parties?—Yes; I may value; I am free so far.

9883. For which party do you value outside the court?—I am usually employed by the landlord. I have done work privately by agreement between landlord and tenant, and fixed rents out of court.

9884. There are two classes of court in Cork; first, the county court; you value for the county court judge there?—Yes.

9885. Then there is the Sub-Commission Court, and in that you value for the landlords?—Principally. I value land for anyone that asks me to put my value upon it.

9886. In reply to Mr. Carson you used an expression which struck me very much. You said the landlord's valuer is generally "nearer the mark" than the tenant's valuer?—I should have said nearer to the fixed rents; that is what I meant by "nearer the mark."

9887. That might be expressed in another way; it might be said that the rents as fixed come nearer to the mark of the landlord's valuer than to the mark of the tenant's valuer?—Yes.

9888. It might be expressed in that way?—Yes.

9889. Will you tell me what is the effect in the Sub-Commission Court of Cork; are the rents fixed lower than what you value for the landlord?—I will take the case of the last Appeal Court. I think my rents were some 5 to 9½ per cent. higher than those fixed by the Sub-Commission. I valued before they came before the Sub-Commission Court. It was the M'Carthy estate, which we expected would have been settled out of court, and they reduced my rents, I think 5 to 7½ per cent., or something of that kind.

9890. You say the landlord's valuer generally comes nearer the mark than the other. Can you remember what was the greatest difference between any rent you valued and any rent fixed by the Sub-Commission Court of Cork lately?—No; I have not been before the Sub-Commission Court lately; it is more the Appeal Court.

9891. It would be well if you could tell us, if it would not be too great a strain upon your memory, what would be the greatest difference in the recent cases between rents valued by you and rents fixed by the Sub-Commission Court?—I could not tell you from memory.

9892. Would it be 30 per cent.?—Oh, dear no, nor 20, nor 15, I think.

9893. You say the county court judge affirms your rents?—Generally, yes.

9894. Almost invariably?—Almost.

9895. So that acting in an official capacity for the county court judge you value rents which are affirmed by that judge?—Generally.

9896. And acting as the landlord's valuer for the Sub-Commission Court in the same county you value rents materially higher than the court is willing to fix them?—Something higher, and acting for tenants, I have valued for a tenant too.

9897. Do you value, then, for the tenants?—Yes; I valued in a very important case of a tenant's which came before the Sub-Commission.

9898. I suppose you valued lower than the court fixed?—No, indeed, strange to say.

9899. When you value for the tenant what do you do?—When I valued for the tenant it was a very peculiar case, and the figure fixed was very close to mine; I do not think there was 2 per cent. difference.

9900. I do not follow your answer?—I say there was a very peculiar case before the Sub-Commission Court and Appeal Court, and it was also mentioned before the Court of Appeal in Dublin; and my valuation was very close, valuing for the tenant. It is a case that came before the judges in Dublin.

9901. When you value for the tenant would you say that you are as much below the rent fixed by the court as you are above it when you value for the landlord?—No, I was above it in this case.

9902. You were above it although you valued for the tenant?—Yes, above that.

9903. So

Mr. *Sexton*—continued.

9903. So that whether you value for the landlord or for the tenant you generally manage to get higher than the opinion of the court?—No, it so happened that I was higher in both cases than the Commission.

9904. Is it not a somewhat difficult position for you to be placed in, to act as an arbiter in the county court, and to act for one of the parties in the same jurisdiction in the court of a Sub-Commission?—No, I put what I consider the value of the land upon it in either case.

9905. When you act in the Sub-Commission Court they think your values too high, and when you act in the county court the judge takes your value?—It has come to that in some cases.

Mr. *Brodrick.*

9906. What instructions do you get as to improvements from your county court judge?—I get no instructions at all.

9907. What you do is simply to satisfy yourself as to the improvements on the ground and report the value accordingly?—Exactly; we allow what we think fair.

9908. You do not have in your mind the law of the business at all?—No, we leave that to the judge.

9909. The general presumption is that the improvements on the ground belong to the tenant, if they are shown by the tenant?—Yes.

9910. And you deduct accordingly from the rent you fix?—Exactly.

9911. What do you do about improvements that you do not consider suitable to the holding?—What do you refer to; specify, please?

9912. You find buildings?—Buildings we do not look at if they are done by the tenant.

9913. Your system, I understood you to say, was that you deducted the buildings either that belonged to the landlord or to the tenant, and then valued the land?—No; I value the land irrespective of buildings.

9914. I say irrespective of buildings?—Unless the landlord has built them.

9915. If the landlord has put very good buildings on the land, what is your process then?—If the landlord has put upon the farm buildings too good for it, I do not put the full value upon them, but I put on whatever would be the full value of buildings suitable to the farm. Those are very exceptional cases where the landlord builds much.

9916. In valuing land, what time of year do you go upon it? Do you go at any time at which you are called upon to value?—Yes, at any time. The county court sits four times a year in County Cork.

9917. In what months?—In January, in March, in July, and in November.

9918. Now, take January. Suppose the county court judge were fixing the value of a farm at that moment under snow?—We cannot go out in snow; it must be adjourned; he postpones the case.

9919. Then you avoid very extreme weather?—Yes.

9920. Do you find it at all difficult to make up your mind as to the values in bad weather; do you think that your mind would be influenced by seeing the land in the spring, when things are better?—I would rather prefer seeing the land when it is in grass, but we dig every field except they are very small, and judge by the soil what it ought to produce; but it is an advantage to go upon the land in spring or summer.

9921. I suppose an inexpert valuer might be very much influenced by the time of year at which he saw the land?—Oh, very much, certainly.

9922. Do you know whether your valuation is more thorough when you have more time than the Sub-Commissioners have to give to it?—No, we have plenty of time; in either case we have plenty of time.

9923. You have plenty of time?—Oh, yes.

9924. What sort of time do you take to value a farm of five-and-twenty or 50 acres?—I might go over a farm of 50 acres in an hour, and another farm of the same size would perhaps take four hours. It depends altogether upon the class of land. You will find upon one farm the land all the same as to its texture; in another farm you will find seven or eight classes of soil upon the farm, and there comes in a difficulty; you even find in one field two classes of land.

9925. Does the tenant prove any of his improvements before you, or does he go before the county court judge to prove them?—He shows them to me; I inspect all the improvements.

9926. Is any evidence of any kind taken before you on the land?—Simply the tenant's evidence, and I have "noticed" the agent (or landlord), and if he comes forward and disputes an "improvement," and says the tenant has not done it, but that he has done it, then that is tested in court.

9927. Have you ever, in these investigations, heard the tenant complain that he had not got ample protection under the existing law?—No, I do not think they ever raise the question of law at all when we are valuing the farm.

9928. Your own view would be that the law, at present provides protection for improvements, or encouragement to the tenants to make them?—Certainly.

9929. As far as you can see, you are able to allow for the improvements on the land in making your valuation?—Certainly.

Mr. *M'Cartan.*

9930. Did I understand that the pay of the court valuers is three guineas a day?—Yes.

9931. That is to say, you get three guineas for the day on which you inspect the farm, and three guineas for the day on which you come into court?—Yes.

9932. And you go out and inspect the farm before there is any evidence given in court at all?—Yes.

9933. And it may happen that the farm you go out to inspect is not a holding to which the Act applies; it may be excluded as a mill holding, or it may come under one of the many other exclusions?—Yes; we get the ordinary notice to value, and we do not consider that.

9934. So that this expenditure is wholly

Mr. *M'Cartan*—continued.

incurred before it is known whether the Act applies to the particular holding?—Yes.

9935. The tenant may not be a "present" tenant?—We do not inquire into that.

9936. No matter what the person may be, if he serves a notice on your court, it is your duty to go out and inspect the holding before you find out what sort of a holding it is?—Quite so.

9937. You say you have a note-book?—Yes.

9938. Have you a copy of it here?—No, I have not.

9939. Do you make in the note-book any additional entries beyond what appear in your book?—Yes, I number each field on the map; I put down "No. 1," and then put in my note book any remarks with respect to that field.

9940. Do you put in your book any remark as to what the value of the building is?—The tenant claims buildings; I generally look over them and put a rough value in case I should be asked about them in court.

9941. But you always do put down the value of the buildings?—Yes.

9942. Because you cannot say what may turn up in court afterwards?—Yes, but I cannot say we go into it with as much exactness when we know the tenant built them.

9943. At all events you put down something?—Yes.

9944. But you would not say it was very exact?—No.

9945. Have you ever had occasion to revisit a farm after the evidence given in court?—Only once.

9946. Why had you reason to revisit it?—I mentioned that a little while ago.

9947. The boundaries?—Yes, and the portion the landlord disputed.

9948. You say you do not take into account the fences as improvements?—No, I said internal fences.

9949. Internal fences you do not take into account?—No.

9950. Do not you think internal fences add to the letting value of a farm?—No, I do not.

9951. I will give you an example: Suppose the farm is divided into 10 or 12 fields, you crop one and grass another; in such a case as that would not you require to have a fence to prevent the cattle going into the crops?—Yes, but suppose you change the system of that farm; another man comes in, takes on another system, and throws them all down.

9952. Take grazing. Could you get along without employing herds if you had no internal fences?—I do not mean no internal fences; we never find a farm without internal fences.

9953. When they are there, do not they add to the letting value?—I think I had better explain.

9954. I should like to hear the explanation?—You generally find fences crooked. The tenant throws them down and straightens them, then puts in a claim, not only for throwing down the crooked ones but a claim for raising the straight ones.

9955. I am not putting that case, but where, for the purpose of farming properly, he has to make the necessary fences; is not the farm more valuable with those fences than it would be without them?—If the fields were too large.

9956. Take the case of an ordinary small farm in Ireland?—In the case of an ordinary small farm we do not allow them, but if a field were too large and we saw that it was necessary to make a new fence, we would allow it.

9957. It would cost the farmer more to use the farm without the fences than it would when they were made?—But such a case never arises.

9958. You think it does not add to the letting value?—No.

9959. Who makes the fences usually?—The tenant; that is, those fences they claim for.

9960. You were saying to Mr. Carson, I think, that the estimate put on by a valuer for the tenant in court is extraordinarily low?—Usually.

9961. Would you say that that put on by the landlord's valuer is extraordinarily high?—Sometimes.

9962. Your value is not always adopted by the Sub-Commission?—No.

9963. You swear to it before the Sub-Commission, but it is not always adopted?—No.

9964. But it is invariably adopted by the county court judge, where you have not to swear to it at all?—Yes, but not "invariably."

9965. Can you tell me what is your standard of valuation when you go to value a farm?—My standard?

9966. Yes, the prices. Have you no standard? What would be your standard at present?—I take the prices of my own farming. At present, and during the last few months, I look upon young stock as very low.

9967. So your estimate is based upon the prices you get yourself for your stock and produce?—And the prices going in the fairs, which I know by my own presence in them and my purchasing.

9968. Is it the same estimate you use when valuing for the landlord in the Land Commission?—Of course.

9969. And the Commission invariably fix the rent at a much lower price?—Not much; it is generally pretty close.

9970. Always lower?—No, not always lower.

9971. Is it ever higher?—Very seldom.

9972. Did you ever know a case in which they fixed the rent higher than you valued it at?—Yes.

9973. Do you mean to tell me that the Land Commission fixed a rent at a higher estimate than the landlord's valuer swore to?—Not "swore to"; I very often value for landlords, and they will not produce me, in fact I am not in favour as a landlord's valuer; I have often sent in my valuations, and they have said, "Oh, we cannot produce you."

9974. I am talking of cases where you are produced?—No, I think not, not in cases where I am produced.

9975. In answer to Mr. Sexton you stated a case, I think, of where, with an expenditure of 8*l.* on a holding in a wild state, the increased letting value was 15*s.* a year?—Fifteen shillings a year.

9976. You

Mr. *M'Cartan*—continued.

9976. You gave 5*s.* of that to the tenant as interest?—Oh, no, 8*s.*

9977. Eight shillings to the tenant, and the balance to the landlord?—Yes.

9978. That is the 7*s.*, the balance?—Yes, it comes to that.

9979. On what principle do you do that?—Because the landlord has let to the tenant land in which there was a latent capacity of production, and there was no latent capacity in the first case I mentioned.

9980. Are you aware that in the Report of the Cowper Commission it is stated that the principle of the Land Acts is to reserve to the tenant the whole advantage of his own improvements?—We do not consider the legal points at all.

9981. Do you consider that the tenant is not entitled to the whole advantage of his own improvements?—No, I do not, because the landlord has given him the raw material, in which there was a latent capacity of production.

9982. And which the landlord would never have got; the landlord has run no risk; the tenant has spent the capital, and the landlord has spent nothing?—No; I take my case. When I took the land, I saw in that land latent capacities, and I wanted to take them out of it. If one landlord gives me land that is better than another, I must pay for it. That is my idea.

Mr. *Sexton.*

9983. Of course you know that the Court of Appeal have held that when you have given to the tenant what would repay him his outlay, you are to exercise your discretion as to dividing the remainder of the letting value between the landlord and the tenant, you exercise that discretion by giving it to the landlord?—In this case it comes to that.

Mr. *M'Cartan.*

9984. Do you consider the want of water on a farm is a disadvantage?—Yes.

9985. Would you make the rent not so high in a case of that kind?—I make allowance for water always.

9986. Did you ever know a case where, as in Middleton, say, the case has happened there, after the valuer had given his testimony, he did not know whether there was water on the holding or not?—That was very strange.

9987. They thought so in the court, I believe, too?—I have not heard it. The tenant generally calls attention to all these things, you see.

9988. The attention of this valuer was called to it at the time; in answer to Mr. Carson I think you said that the Sub-Commissions began to make a further reduction of rents or to reduce them on a higher scale from 1884?—I think so.

9989. I believe the Cowper Commission, in its report, after hearing evidence, said that in the Sub-Commissions from the end of 1885 the scale of reductions was from 10 to 14 per cent. below the scale of previous years?—I cannot, of course, be accurate upon those points.

9990. Are you aware that in that report it is

Mr. *M'Cartan*—continued.

said that Sir John Ball Greene said the amount of the rental of Ireland was then 13 millions?—No, I am not.

9991. And that in 1881, 28 per cent. of the total value was due for rent, and in 1886, when the value had fallen from 46 millions to 31 millions, the rent claimed was 42 per cent. (would that surprise you?), and also that in live stock in 1886 there was a depreciation of 9 millions alone, or nearly three-fourths of the entire rent payable. Now, bearing that in mind, do you think it is a safe rule for you to follow to allow only one-third of the gross produce to the tenant for working expenses?—I think it is fair.

9992. You think it is fair?—I do.

9993. The produce varies very much?—Oh, yes; but you cannot meet all fluctuations.

9994. Take, for example, last year, when the price for potatoes was very, very low, I believe as low as it had been for many years, would the price pay to produce them then?—The price was low, but the crop was a very heavy one; the crop paid fairly, I think, last year.

9995. You would not contend for a moment, I am sure, that the increase in produce would in any way make up the average for the reduction of price in last year's crop?—I think it did. I think potatoes paid fairly last year in County Cork.

9996. Well, I do not think you will get many in Ireland to agree with you upon that. Have you met with any cases of town-parks?—No, I have not; we have had the accommodation lands, such as a cottage garden and those things; market gardens.

9997. But you know something about them?—Yes.

9998. Would you agree in this suggestion: Mr. Knipe, in his report says: "I think that the holders of town-parks should be enabled to apply to the Land Commission to get a fair rent fixed. I cannot see why the population of any town should be taken as a basis from which to exclude the owners of town-parks from the benefits of the Land Act. Land in close proximity to a thriving and populous town will be more valuable than the town-parks adjacent to a village. These facts will be taken into consideration by the Commissioners when fixing the rents. The landlord should have power to resume possession of a town-park upon satisfying the Commission that the land was *bonâ fide* required for building or public purposes, and upon paying to the tenant such compensation for improvements and disturbance as the court might deem just." Would you have any difficulty, in case town-parks were admitted to the benefit of the Act, in fixing a fair rent on a town-park, considering its proximity to a town, and the value it has for accommodation land; do you consider yourself competent to do it?—I think it would be fair if I was allowed by law to fix the fair rent on it; to take into account the character of the land.

9999. But let me ask, do you think you would be competent to take into consideration all the circumstances and fix a fair rent to which the landlord would be entitled?—Yes, I think I would

Mr. *M'Cartan*—continued.

be competent, but I think I would put a very heavy rent on a banker or professional man.

10000. I have no doubt that you would; as to the mill holdings, have you any experience of them?—No, I have not. Most of the mill holdings now are agricultural holdings, because the mills are all going to ruin; they are not working. I valued one mill holding.

10001. I suppose you are aware from your own experience that formerly the leases given out by the landlords, who were not hard on their tenants, contained a covenant obliging a tenant to have his corn ground in a mill on the manor estate?—Yes.

10002. That has ceased, I believe; there is not much grinding going on now at all?—No.

10003. I suppose in most of the cases you know of mill holdings the mills are gone out of use altogether?—Yes.

10004. Would you suggest that in most cases the farms should be admitted to the fair rent provisions of the Act?—Certainly.

10005. Would you also suggest that in cases of sub-letting before the passing of the Act, and where there is no loss to the landlord, the tenant should not be deprived of having a fair rent fixed because of that sub-letting?—That is a case I could not answer "Yes" or "No," because I know different instances where there is but a small sub-letting; we will say that the tenant holds 20 acres, and is sub-letting two or three acres, I certainly think there ought to be fair rents fixed there.

10006. In all cases where there is no loss to the landlord, and where the sub-letting was before the passing of the Act of 1881, would you not admit those?—I would not admit certainly where there was a sub-letting in a case where the middleman, as I may call the tenant, receives a very heavy rent, far beyond his own, from his sub-tenant, I would exclude that man; I think it is not fair to admit him.

10007. I do not understand; but do you mean this: that where the farmer receives from the sub-tenant a rent greater than the rent he pays to the landlord, you would not admit a man of that kind?—Where that is considerable.

10008. But suppose he only receives a very small portion of rent from him, what would you do?—I would admit him; it is not fair to put him out.

10009. What proportion would you say?—I think if he gets the same rent as that which he is paying himself, that would be fair; but sometimes they get double that, they are the worst landlords going, those middlemen.

10010. Usually these sub-lettings are in respect of cottier houses, are they not, with small patches attached?—Something more than that.

10011. Is that the general rule?—It is.

10012. And in these cases would you admit them to the benefits of the Act?—Certainly.

10013. Now, as to the shortening of the judicial term, you seem to be against that. Are you aware that the Cowper Commission recommended that the judicial term should be shortened from fifteen to five years?—Yes, I have heard it.

10014. Do you think there would be any disadvantage if it was shortened to at least seven years?—Not if the rents could be fixed, as was remarked a while ago (by I forget whom), on the lands; then go to the Sub-Commission Court as an appeal.

10015. Is it not a fact, as you know, that with the Sub-Commissions there is not nearly the same trouble, or excitement, or expense in the cases fixed at present, that there used to be at the beginning of the system?—Quite true.

10016. Is it not much more simple and easy?—But it is expensive.

10017. But it is not so expensive as it was then?—I am not sure of that.

10018. I dare say if the farmers knew of the principles acted upon in the county court they would not trouble themselves so much about the employment of professional men valuers or advocates?—Yes.

Mr. *Fuller*.

10019. I suppose your endeavour is in valuing not to value so as for the tenant to be rented upon his improvements, is that so?—Yes.

10020. Do you consider that you succeed in that?—Well, generally they are satisfied; I meet them.

10021. Never mind whether they are satisfied or not; is there a rent put upon the tenant's improvements by the system which you adopt?—I think so.

10022. You think there is?—I think so.

10023. That is contrary to your evidence, that it should be, and yet under the system you cannot help yourself?—Excuse me, I have not caught your question, then.

10024. I understood you to say that you did not wish to put a rent upon the tenant's improvements?—Yes, certainly.

10025. But the effect of your valuing is that you do put a rent upon tenant's improvements?—It appears so upon these old improvements done years ago, by whom we know not, the tenant never knows who has done them.

10026. In that particular instance you gave me just now of 8*l.* being laid out, which returned a value of 15*s.* an acre, upon land which was only worth 1*s.* an acre?—Four shillings, I said.

10027. I am speaking of the one where you laid out 8*l.* and it came eventually to be worth 15*s.* an acre?—I said that was worth 4*s.* in its rough state.

10028. It was worth 4*s.* an acre?—Four shillings an acre.

10029. In its wild state?—Yes.

10030. Then you allowed the tenant 8*s.*, that is 5 per cent. upon that capital?—Yes, upon his outlay.

10031. And the landlord 7*s.*?—Oh, no.

10032. That is to say the difference between 15*s.* and 8*s.*, the 7*s.* went to the landlord; that was an increase of 3*s.*?—Exactly.

10033. Now does it not strike you that that is a serious impediment to a tenant to reclaim land, because this was a case of reclaimed land?—No; I do not think so. You must bear in mind that a great portion of those lands such as I have mentioned about the last case are reclaimed without any cost to the tenant, though

Mr. *Fuller*—continued.

though I value it at 8*l.*, because he lets that in "score" land, he gives a "score" strip, say, to a labourer, and this labourer limes and tills that portion of land and gives it back to him after three or four crops; there is a large quantity reclaimed, but no money is spent upon it by the tenant.

10034. Here are 3*s.* an acre that, added to the value of the land for the tenant's improvements, goes directly into the landlord's pocket?—Yes.

10035. Is not that a rent upon tenant's improvements?—It is.

10036. It is, although according to your system (I do not say it is everybody's system) you could not help yourself putting a rent upon the tenant's outlay?—It comes to that.

10037. Therefore, as a matter of fact, in this particular instance under your system you do put a rent upon the tenant's outlay?—Yes.

10038. Now let me put another fact. I asked a former witness a question as to this fact: I knew of a place in Achill Island where an enclosure took place of something like 10 or 12 acres, some 40 or 50 years ago, on the side of a mountain, which could not have been worth, in its primitive state, more than a shilling an acre at the outside. A house was built upon it; necessary buildings were put upon it, and the land was reclaimed; and I asked that witness whether, considering that land was now worth 1*l.* an acre, he would, in fixing a fair rent upon it, have fixed it at 1*l.* an acre; he said he would; would it be so in your case?—Oh, no; because I would take off what I believed it cost the tenant to improve it.

10039. You would have no evidence of it; it would not be in your map, as I understand your map only goes back 48 years; this is apparent to anyone who sees it; but there is no one ready to prove it; would you therefore in your valuation value that at the rent the land is worth at this present moment?—That has been my practice.

10040. Therefore would not that instance be a case of putting a rent upon a tenant's improvements?—It would, but I rather think that if that was proved in court the county court judge would come forward and say, "You must allow this man for his improvements."

10041. But there are no improvements, there is nothing he has made there?—Yes, I see the difficulty.

10042. Upon any system that the valuers go upon, upon the present system which is brought before us, you are almost forced to put a rent upon a tenant's improvements?—I see; the system breaks down there.

10043. You said early this afternoon that you are very anxious that there should be two valuers rather than one; could you tell me on what particular points you have doubts in your mind, whether it is as regards the tillages or the value of the land in its various qualities, or what the points are?—Because, as I asserted at the beginning, I feel it is a very responsible position to be in to fix the rent.

10044. But upon what points?—As to the value of each portion of that land; and I would wish to have a second person to consult with.

10045. As to the intrinsic value of the land in its present state?—No, the general value of the farm. It is only an opinion that a man can give as to the value of a farm. I defy any man to state the actual value; he gives his opinion; there is no standard by which you can take up a cartload of clay and say, "That is worth so much an acre," you only give your opinion of what it is worth after working it out, aspect and locality come in, and I would wish to have a second to consult with on all those points.

10046. Then of what value would be two opinions instead of one; suppose you differed, would you split the difference?—Probably. I think it would be very fair. If I thought it worth 10*s.*, and he thought it worth 12*s.*, we would divide the difference. I look upon it as one of the most difficult positions to be in, to put a value upon a farm that you never saw before.

10047. Then respecting shorter periods, do you consider that short periods would deter farmers from improving their land; that is to say, between the thirteenth and the fifteenth year?—I fear in many cases they would not improve for the last two years or so of their term.

10048. Then do I infer from that that if at the end of the period you went upon the land to value it for the sake of fixing a new rent, you would then put a rent upon the improved condition of the land, although the whole improvement took place by the tenant?—No; I should do as I had done before: allow him for his improvements; those are all registered, you know.

10049. Then you would not alter the letting value?—I would come down in my value of the land but not change the improvements—those are all registered—we have them on our notices.

10050. Then I gather from you that you would, according to your system, put a rent upon the improved value by the tenant; if there is a fear in the mind of the tenant two years beforehand he would say, "I am going to be rented on my improvements, I will therefore beggar my farm the next two years," and if that is likely to take place I want to know from you, as a valuer, whether that would be a preventitive of your valuing upon his improvements?—No, I do not see how it would make any difference. I value the land in its present state, allowing him still for his improvements.

10051. Then you think it would make no difference to the tenant?—I do think it would make a great deal of difference to the tenant. As it is when I am valuing on a fall of prices, then, of course, I must lower my value.

10052. I do not think you see my point. You say that shorter periods would very likely induce tenants in the last two years of their tenancy to deteriorate their land?—For fear lest they might be rented upon the improved state of their farms. I think they would allow furze to grow; they would not go grubbing up furze to keep it down.

10053. That is a deterioration?—Yes, it is.

10054. They would not cultivate as they otherwise might?—Yes.

10055. Is that a fair position for a tenant to take, that he wants to be guarded against being rented for his improvements, is it a fair thing?—Those are not improvements; those are the natural course of tillage; in the natural course

Mr. *Fuller*—continued.

of tillage you have the right to grub up your furze as it grows; he would cease to do that.

10056. Is it a justifiable fear on the part of the tenant that he will be rented upon his improvements?—I cannot say that.

Mr. *T. W. Russell.*

10057. It is a very important question: Do the valuers going upon a farm in a high state of cultivation put a higher rent upon it than they would put upon a farm that is not in a high state of cultivation?—It is a difficult question to answer.

Mr. *Macartney.*

10058. Do you speak for other valuers than yourself?—Oh, no; I am only speaking for myself. You find a farm in a high state of cultivation; you dig into it, and you find that farm contains an inferior quality of land; you do not put upon it the value that you would put upon it in its improved state, but you put upon it what you believe is its intrinsic value, and *vice versâ.*

Mr. *Fuller.*

10059. Now on the subject of draining you told us just now that you would not allow anything for drains unless you could follow the outlets?—Yes.

10060. Now in your knowledge of farming would not the land itself show that it wanted draining if those drains were stopped?—It would, and it does show because you find where the drains are stopped that the land bursts up here and there.

10061. But suppose you find the land drained and yet could not see the outlet, would not you give the credit to the tenant then?—No, I never do.

10062. Why not?—Because it is utterly useless.

10063. But after it is drained, because you cannot see the mouth, it does not necessarily follow that the water has not got the means of getting away somewhere else?—It cannot get away.

10064. Then the land would be wet, would it not?—And you find it wet here and there.

Mr. *Fuller*—continued.

10065. I ask if the land is drained, and that condition has been brought about by draining, because you cannot see the mouth of the drain, and see where the water comes out; do you not then give the credit to the tenant?—That depends upon the season. If I visited it in the summer, of course it is dry, but if in winter, it would be otherwise.

10066. That is a very haphazard way of valuing; you would give him credit if you found it dry?—Certainly, in winter.

10067. You said just now, and I could not quite follow you, that you took into consideration the quality of the stock on the farm, and not the number of the stock, in fixing rent; what do you mean by that?—The quality is very important. If you see cattle on a farm in good condition, it is a very good test as to the quality of the herbage.

10068. Where they are up in flesh or in beef, do you mean the general appearance of them?—If you see them "weedy" you may be sure there is bad herbage; I think it is a very great help.

10069. Is that your practice as a farmer; do not you think there is something in breed?—Certainly.

10070. Then why discourage a man putting a high rent upon a well-bred animal?—I would not do such a thing as that; we do not find many of those well-bred animals amongst tenant-farmers, I would say.

10071. You say that you take one-third of the gross receipts of the arable farm as a fair rent for the landlord?—Yes, I think that is fair, about a third.

10072. Is that the rent you pay?—Yes, about a third.

10073. Do you keep accounts?—Yes.

10074. And you can afford to pay one-third of your gross receipts to the landlord?—About that; something about a third.

10075. Have you ever asked that question on English soil?—No.

10076. I heard you say you went into Devonshire?—I did, but I never asked that question. I went through several farms there.

Monday, 16th July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. T. M. Healy.
Mr. Kenny.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. Justice BEWLEY, called in; and Examined.

Chairman.

10077. You were appointed Judicial Commissioner of the Land Commission and a Judge of the Supreme Court of Judicature in Ireland in December 1890?—I was appointed in December 1890.

10078. And before that?—Before that I was a member of the Irish Bar from Michaelmas Term 1862, and I was appointed a Queen's Counsel in Hilary Term 1882.

10079. And you had had practice in land cases?—I had a great deal of practice in business under the Land Acts, and also in advising on cases connected with the law of landlord and tenant in Ireland, both in the North, South, East, and West.

10080. Now your duty is to preside over the sittings of the Land Commission held in Dublin and all over Ireland?—Yes, I have to preside over the sittings of the Land Commission both in the country and in Dublin. We sit in all the counties in Ireland, with the exception of a few counties in the neighbourhood of Dublin.

10081. That is for rehearing and appeals?—Yes. "Rehearings" are the rehearing of cases heard before a Sub-Commission; "appeals" are appeals from the county court judges; and in the case of the county court judges the appellate jurisdiction extends not only to fair rent cases and true value cases, but also to cases of claims for compensation under the Act of 1870.

10082. Then you sit in Dublin with Mr. FitzGerald, and hear motions in fair rent cases?—Yes; Mr. FitzGerald and I take those, because they generally raise matters of almost exclusively a legal nature; we have a great many such motions.

10083. Do all the appeals, including in that term rehearings, actually come on for hearing?—No, a vast number of them are ultimately withdrawn or settled. Some are withdrawn some time before the hearing, and some are not withdrawn until they are actually called on for hearing. One of the reasons of that is that at a comparatively small expense either party can insure a

Chairman—continued.

fresh and independent valuation by one or two court valuers. There is a stamp of 1*s.* on an appeal notice in small cases and 10*s.* in large cases. Then when the appeal is taken (meaning by an "appeal" also, of course, notices of rehearing) we send down now two court valuers to make a careful and independent valuation, as you have been told. When their valuation is made a notification is given to each party of the result of the valuation, and then if the valuation coincides with the fair rent, or is near the fair rent, either party, if he so thinks fit, can withdraw his appeal at what is a comparatively small expense; even up to the very time of hearing he can withdraw, thereby saving some expense. Sometimes in court, if he withdraws when the case is called on, he saves half the solicitor's fee.

10084. Now will you give the Committee some idea of the amount of your work; take, for example, the year 1891?—Yes. I was appointed, as I said, in December 1890; and I entered on the hearing of fair rent appeals in January 1891. In the course of the year 1891 I delivered judgment in 1,485 cases. Those were all contested cases, fully heard out; and in 211 of those legal questions arose.

10085. Only in 211?—In 211 out of the 1,485. Some of those were very serious and difficult questions. It so happened that the very first sitting I had was at Monaghan, and there a case came before me that I think has been mentioned before the Committee more than once, the case of Hagan *v.* Jackson, which involved a very important question as to the effect on a "present" tenancy of the taking of a small additional piece of land from an adjoining tenant and having a rent fixed on the whole. I looked upon that case as one of very great importance, and took a great deal of trouble about it.

10086. Do not trouble to go into the case; but you say, generally, that 211 out of the 1,485 were cases involving points of law; may I ask what was the character of the other 1,200 and odd cases; were they mainly on valuation?—Oh, of course,

Chairman -continued.

course, a large proportion of them were. Of the 1,485 contested cases, 211 were questions of law. Even some of those questions of law related to valuation in this way: questions as to the improvements, legal questions as to the right of exemption, and so forth.

10087. But a very large portion (and you will see the reason for my putting this question to you a little later on) of the cases that come to you on appeal are cases in which valuation is the most important element for you to decide?—It is the most important question; there is no doubt about it, by far the greatest proportion.

10088. We will take a note of that. In 1892 how many judgments did you deliver?—In 1892 I delivered judgment in 1,559 appeal cases, and in 361 of those legal questions arose.

10089. Then in 1893?—In 1893 I delivered judgment in 1,105 appeal cases, and of these there were 303 involving legal questions; and up to the 31st May of the present year I delivered judgment in 391 cases, and in 116 of those (a very large proportion) legal questions arose; that is to say, taking all, up to the end of May last I delivered judgment in 4,540 cases fully heard out, and in 991 legal questions arose; and since this return was made to May I have had several sittings and other legal questions have arisen, so that I have delivered judgment in substantially over a thousand cases in which legal questions arose.

10090. Now besides appeals you make Orders on Motions?—Yes; sometimes a very great number.

10091. Will you tell us what is the mode of procedure; kindly explain to us what an Order on Motion amounts to?—Well, there are various kinds; it would be almost impossible to say what they all are.

10092. But what is the form; how is the Motion made?—There are two classes of Motions; some of them are made *ex parte* without any notice to the other side, either by solicitor or counsel appearing before us in Dublin; that is in simple matters. Then there are other Motions of which notice is given to the opposite party which are sometimes heard at very great length and take up a good deal of time.

10093. And involve decisions of importance?—Sometimes they involve decisions on important points of law. Amongst others I may mention a case of Spencer *v.* Tedcastle, a well-known demesne land case; that raised a very important question of law, and which ultimately went to the Court of Appeal.

10094. Then the number of appeals pending on the 1st January 1891, when you began, was what?—On the 1st January 1891, there were then pending 6,595 appeals. It looked almost hopeless then to get through our appeals, and in the interval between that and the 31st March of the present year there were 6,633 additional appeals lodged; so that I may say the total volume of appeals worked on in that time was 13,228.

10095. How many appeals have you disposed of?—There remain now for hearing only 459. Of course, I need hardly say that the large bulk of those 13,228 were settled or withdrawn, for I have already said that I only delivered judgment in 4,540.

Chairman—continued.

10096. Before we go any further into the matter of the manner of your hearing of appeals, what have you to tell us about a subject that has interested us, that of the reporting of your judgments?—Oh, the reporting of judgments, I saw that had been noticed before the Committee. In my opinion judgments in land cases are now very well reported, and sufficiently reported. Some years ago, no doubt, land cases were neglected. Immediately after my appointment as Judicial Commissioner I received an official communication from the Incorporated Council of Law Reporting to say that they proposed to appoint a permanent reporter in my court, and asking me to give the same facilities as every judge does. I need hardly say that I was very glad to do that, for it is of very great importance to the public, to the profession, and to the judge himself, and his decisions should be correctly reported; but in addition to that there is a very admirable publication (the "Irish Law Times"), which is what would be commonly called an unauthorised report; and they have had (especially during the last two years) excellent reporters in my court, and, so far as I know, there is not a single case of importance in my court that is not reported at least in the "Irish Law Times."

10097. May we take it that you are satisfied?—Quite satisfied. The present reporter of the "Irish Law Times" is always present. I never saw a reporter, or a man of his standing indeed, who paid such constant attention, and waited there day after day when really there was nothing to report.

10098. May we consider that in your view every important judgment of yours is accessible to your Sub-Commissioners, and to the profession, and to the public?—Yes, it is, in this way: I mean to say, so far as the authorised reports are concerned, there is sometimes considerable delay in publication. As far as the "Irish Law Times" is concerned, generally speaking, the reports come out very soon, but in addition to that two of the Legal Assistant Commissioners, Mr. Bailey and Mr. Doyle, live in Dublin, and if Mr. Bailey or Mr. Doyle wanted to know anything about any case that I had decided, they would come as a matter of course either to Mr. FitzGerald or to myself, and get the exact grounds of the decision.

10099. But do you consider that that is really a satisfactory footing on which to leave so important a matter. Here is a subject which raises any number of contentious issues on nice and intricate points. Surely it is not satisfactory to say that Mr. Bailey and Mr. Doyle can have a copy of a judgment or your opinion of a judgment if they think fit?—Anybody interested can obtain a copy of a judgment.

10100. Do not you think it would be desirable to have an authentic report of every one of your judgments?—I will not say every one, for certainly I must say I agree with an expression of Judge Shaw's that I read in his evidence, that there is a great deal of rubbish reported.

10101. Do you mean to say that there is "rubbish" in any of the judgments?—The decisions in a great many cases turn upon questions of

Chairman—continued.

of fact; the whole of the judgment consists of the application of well-known principles of law to the particular facts of that case. Such judgments, as a rule, are worthless, because they do not give any assistance in other cases.

10102. We will agree that it might be desirable to sift the reports and take only what are called in the profession "leading cases"; but would it not be desirable to have them in an authentic form when we consider that these Acts really go into the depths of Irish social life?—It would be very important if some highly-qualified person, unconnected with the Land Commission (some barrister), would, either at the expense of the Government, or as a private enterprise, make a collection of the principal cases on the Land Acts and publish them in volumes.

10103. Then you think it would be desirable, whether by private enterprise or at the expense of the Government, to have a report of that kind?—Yes; but I do not think it would be desirable to go to the expense, nor could I recommend any Minister to advise the Executive to go to the expense of necessarily printing every judgment that is delivered in land cases. I omitted to mention this (which probably the Committee know already), that over and above these legal reporters properly so called, who are barristers, one connected with the Incorporated Law Council's Reports, the other with the "Irish Law Times," we have attached to the Land Commission an admirable reporter, a newspaper reporter; he reports all the evidence and reports all my judgments also.

10104. I have the greatest respect for newspapers and newspaper reporters, but has not it always been said (it certainly was in my day at Lincoln's Inn) that a barrister only can report a judicial decision satisfactorily?—That is so; but at the same time this particular reporter has had very great experience now, and he, whenever he gets commissioned for the judgments in the Court of Appeal, sends me a type-written copy taken from his notes, and I revise it for him, and then it is as authentic as any other.

10105. We need not press this further, because I take it that you agree with the drift of my question that it would be desirable to have a barrister's authenticated report of leading cases?—I think it would be a very useful thing to have a collection of Land Act Reports, and to supply those to the Sub-Commissioners.

10106. Now, I want to ask you about your procedure when these appeals come before you; will you tell us how you deal with an appeal?—Yes, I will tell you exactly. An appeal, that is speaking now of the ordinary rehearing which we call appeals from the Sub-Commission, is a complete rehearing of the case. If the originating notice, as in 999 cases out of a thousand, has been served by a tenant, then the tenant begins; the tenant is examined, and he gives his evidence in reference to when he got the holding, how long he has been there, and the improvements, if any, he has effected, and so on; what changes in the rent have been made; whether there are any incidents attached to the holding, like rights of turbary, rights of seaweed, and so forth; he gives his full evidence then upon the subject.

Chairman—continued.

10107. Which he has already done before the Sub-Commission?—Which he has already done before the Sub-Commission. Then he is cross-examined; then he examines his valuer or valuers as the case may be, which sometimes he has not done before the Sub-Commission. We get, with the files that you have seen, not merely the order of the Sub-Commission, but what is called a minute of the order, and the minute of the order states on one side the names of the witnesses who have been examined, and in very many cases, a large number of cases, a great many more witnesses are examined before us than are examined before the Sub-Commission. For instance, as a rule, landlords give no evidence before the Sub-Commission at all; apparently they wish to see first whether the Sub-Commissioners will fix a rent that they will assent to; if they do not assent to the rent, and if there is an appeal, then they produce valuers, for the first time very often, before us. As a rule one of the reasons may be that the class of valuers employed by the landlords are men who receive large fees, and it is a very expensive proceeding if there are many cases on the same estate; and thus very often we have a large number of witnesses examined before us on a rehearing who have not been examined before. Also I think it is right to mention to the Committee, because I think it was noticed in the evidence of one of the witnesses, sometimes (not very often) a tenant has omitted to endorse upon his originating notice the improvements that he claims, and sometimes he does not even ask for an adjournment before the Sub-Commission, and his improvements are all excluded from consideration. If, however, a reasonable time before the rehearing, he serves a notice on us of his intention to give evidence, on the rehearing, of these omitted improvements, then we go into the question of improvements just in the same way as if they had been endorsed upon his notice.

10108. Then you hear your own valuer?—Then, as you know, before our rehearing we send down the court valuer or court valuers (now usually two) to inspect the holding, and they have the advantage of having the map that was prepared by the lay Sub-Commissioners; they go over the holding and check the boundaries, and they reinvestigate the whole thing *de novo*, quite independently.

10109. Do not they labour under this disadvantage in their reinvestigation as compared with the Sub-Commissioners, that they have not heard the evidence; I only want to know whether you think that is a serious disadvantage?—It is not a disadvantage on the question of value at all; their principal function is to value the land, and as far as that is concerned they can form their opinion quite as well without hearing any evidence. On the question of improvements some of them seem to consider that they are bound to restrict themselves to improvements that were proved before the Sub-Commission; but others, in addition, refer to any additional improvements that they find actually on the holding, and they will leave it to us on the appeal to allow those, or disallow them, as the case may be.

Chairman—continued.

10110. We have had, as you know, Mr. Cunningham before us, who described the proceedings of an appeal valuer?—Yes.

10111. We understood from him that he handed in to you his report, and that after handing in his report he had no further communication with you?—He had no further communication at all with us, except that on some very exceptional cases we might communicate with the court valuer himself, but as a rule we hold no communication with him at all; we want to leave him as independent as possible; he goes down and he makes his valuation from inspection and from the files he has there; then he makes his report and the result of the report is communicated to the parties. We never give any direction to the valuers except in special cases, such as in Boyle *v.* Foster (a mill holding case), in which we sent down Mr. Cunningham, I think it was, and gave him special instructions.

10112. That must be the case then that has been referred to; he said that in his experience only once did the Commissioners apply to him (in answer to a question of mine), "For what lawyers call 'further and better particulars'?—(*A.*) That was only once; and it had reference to a complicated case where I gave alternative reports; that is to say, in case they decided one way, such and such an amount, and in case they decided otherwise, then another amount"?—Yes, I think that is the case.

10113. Would you explain to the Committee what advantage you conceive you have over the Sub-Commissioners in judging of a fair rent; how are you more likely than they to arrive at a true conclusion?—Some of the advantages are the advantages that would always come from a second investigation of the same question, especially on the question of value. I mean to say you have four minds forming their opinions on the value of the land instead of two; but also we have this advantage, that is to say, we have the second set of men coming perhaps to the same conclusion, or coming to a different conclusion and pointing out the reasons for their different conclusions sometimes.

10114. Whom do you mean by "the second set of men"?—The court valuers, I mean to say; but if you could have the same Sub-Commission going over the whole of Ireland you could ensure uniformity of action, and uniformity of valuation, then the rehearings would not be at all as necessary as they are at present; but when you have a number of different sets of Sub-Commissioners (even at the present time there are nine sets, I think), men forming different ideas on the question of value, if you had no appellate jurisdiction you would have very great inequality in the rents that are fixed throughout the country, very great.

10115. Is not that an invitation to universal appeals. If you are allowing so much for what I called the other day the "personal equation," as you have done in what you have just said, that is tantamount to an invitation to everybody to appeal?—I think that it is a very great advantage having an appellate jurisdiction over the Sub-Commissioners, for I think it has a steadying effect upon them. In the first place, although I have the greatest

Chairman—continued.

confidence in the present Sub-Commissioners, it has a steadying effect; and as to the "personal equation" that you refer to, I think the Committee have seen enough, from the evidence that has been given already, to know that the fixing of the fair rent is not to be done by any formula, that it depends to a large extent on the experience of the individual Sub-Commissioner, or court valuer, as the case may be. *Quot homines, tot sententiæ:* no matter how well disposed a man may be, the experience of one man is not the same as the experience of another, and Mr. FitzGerald and I, who are constant members of the appellate tribunal, so to speak, over all the Sub-Commissioners, find that some of the Sub-Commissioners are disposed to go high, others are disposed to go low, and the result of it is that if there were no controlling tribunal there would be very great inequalities in rent. Although, therefore, the total result of appeals on questions of value only amounts to a very small fraction on the alteration in the fair rent, it is because the increases practically balance, or nearly balance, the decreases.

10116. May I ask you this question: you told me earlier, in answer to a question, that much the larger number of cases that come before you are cases on valuation?—Yes.

10117. For the purpose of correcting the valuation of the two Sub-Commissioners, the only means at your disposal are the valuations of your own court valuer?—The valuation of the two Sub-Commissioners may be just as good as the other.

10118. What I mean is this: what means have you and Mr. FitzGerald of deciding between your two Sub-Commissioners and your own appeal valuer; that is my point?—The question is this: the question of value is, to a certain extent, a question of experience, and to a certain extent a question of fact. We have evidence given before us by skilled valuers on the one side and on the other. Sometimes the tenants' valuers are not quite so skilled as the others, but sometimes the tenants' valuers give admirable practical evidence, and we pay the greatest attention to what they say. We have skilled evidence on either side; we sift the evidence, and we read carefully the reports, both of the Sub-Commissioners and of the court valuers; we examine the note-books of the court valuers that were produced, I think, to the Committee, and then we decide just in the same way as we should decide any other question of fact; we form an opinion as to what under all the circumstances we consider a fair rent; also, as I have said, we, from our experience through the country, know something about this "personal equation" of the individual men, whether they be court valuers or Sub-Commissioners; we know that some of these men are very good on pasture lands, others are very good on light tillage lands, and not so good on pasture and so forth; and others are inclined to go high on a certain quality of land; these are things we have in our own mind and take into consideration, and in that way we think that we arrive at a fair conclusion.

10119. You put a lowish value, then, on personal inspection; I mean the personal inspection

Chairman—continued.

is made distinctly secondary in your process?—We have, of course, no personal inspection, and I do not think it would be any advantage if we had. Almost all cases of value in every other department are decided either by juries or by judges without any personal inspection at all. I was going to mention, *apropos* of the other question, that the registrar who goes down to the country with us has by my directions made out a list of some appeal cases heard during the last couple of years in which there had been substantial increases or decreases in amount, and *this* is the table he has prepared. That table shows that in some cases we raised rents considerably and in other cases we reduced them considerably. Now although in the whole of Ireland, during the period from the passing of the Act of 1881, there has been very little difference between the total of the appeal rents and the total of the original judicial rents, there would have been very great injustice in individual cases. *Here*, at one hearing at Cork, I find we reduced a judicial rent from 55*l.* to 48*l.*; in another case from 87*l.* to 75*l.*; 96*l.* to 80*l.*; 240*l.* to 220*l.*; 75*l.* to 65*l.*; 60*l.* to 50*l.*; 15*l.* to 8*l.* 10*s.*; 245*l.* to 220*l.* To go again to another place I find we raised one rent from 380*l.* to 435*l.* Now I have a distinct recollection of that particular case. In that case when we got up the court valuer's valuation we found that it was far above the judicial rent.

10120. The judicial rent fixed by the Sub-Commissioners?—Yes, fixed by the Sub-Commission. We thought perhaps the court valuer was mistaken, and we sent down an independent court valuer without naming to him what the other man had done, and we got, not precisely the same figure, but a figure that showed that the Sub-Commission was wrong. It is right to say that in that particular case the Sub-Commissioner was not one of our permanent staff; he was one of the temporary men we had for a time, and I do not think he had had the same experience; but in the result, on the court valuer's independent valuation and the very strong evidence that was given us, we raised that rent 55*l.*

10121. Will you be kind enough to hand that in?—I will hand that in.

10122. And we have asked for a return of the results of appeals; I suppose that is being prepared?—There are 10 men engaged working on it every day and all day, and I am afraid it will not be done for another week or a fortnight. There is another return I would hand in with this, on a question of interest, I think. Just in the same way as to true values; we have (and apparently very much) increased in some cases the true values.

10123. There is an appeal to you on the question of free sale?—In true value cases from Sub-Commissions and from the county court too. Here, now, is a very striking case; the amount fixed as the true value was 200*l.*, and we increased it to 600*l.* Now if the appellate jurisdiction had been abolished, in that case somebody would have suffered.

10124. I do not want to elaborate this point further, because we take it from you that it

Chairman—continued.

would be in your judgment undesirable to abolish the appellate jurisdiction of the Land Commission Court even on questions of value?—Yes; and I will tell you other reasons besides. The principal reason I mention is, that if it was abolished there would be great inequality of valuation, for the reason I have given you; owing to different Sub-Commissioners taking different views, some would go high, some would go low. In addition to that, we sometimes find errors in the orders of the Sub-Commission in this way. Some of the very best men we have in the Sub-Commissions as valuers are not very skilful in mapping (you can very well understand that), and sometimes an area is wrongly mapped out, the boundaries wrongly given, and the quantities wrongly calculated from them. It is much easier for a court valuer, coming with a map already prepared, to go round and see whether the actual boundaries correspond with the boundaries on the map; it is easier for him to correct them than for the Sub-Commissioner originally to compile the map. Again, we find omissions in the orders of the Sub-Commission of rights of turbary and other rights. We find errors in reference to the incidence of taxation, owing to the imperfect information that was given in the first instance, and also errors in reference to drainage charges; those are all capable of being corrected. There is another reason I would like to mention over and above these: whenever the time comes to fix the judicial rents again (no matter what system is adopted) I hope a system will be adopted by which it will not be necessary to go into the whole of these cases, but whatever system is adopted, the staff must be increased largely, at least for a time.

10125. Do you mean the whole staff?—The staff of Sub-Commissioners must be increased. At one time, shortly after the passing of the Land Act, we had as many as 85 Sub-Commissioners. Seventeen of these were legal men; but probably then it would be necessary to engage a number of temporary men to assist for a time. The men so engaged would not have the same experience as our present men, and there would be likely to be great inequalities, and also, as members of the Committee can easily see, these men, who are not permanent civil servants, might not be as steady in their valuations as the men who are now in our service, and have been for a very long time, and who certainly have never given us the slightest cause of complaint. I would like to have an opportunity of mentioning this: from the day I was appointed a Judicial Commissioner to the present moment, although I have received innumerable complaints on different subjects, I have never got any complaint of any individual Sub-Commissioner or court valuer. I think everybody thought, whether he was right or wrong, he was trying to do what was fair and just towards both parties.

10126. Have you any more arguments to present in favour of preserving the appellate jurisdiction?—I do not think so.

10127. Of course you have not left out of account the question of expense?—Of course there is the question of expense.

 10128. That

Chairman—continued.

10128. That is a serious question, is it not?—It is a serious question.

10129. In these returns that you have handed in, my attention has been called to the fact that in every single case there is an increase?—That is the return of true value cases only because it happened to be taken out during a particular period. I do not wish to convey at all that we always increase the amount in true value cases, I only use that return and pick those cases out to show that in those particular cases we have raised the amounts.

10130. Of course you will give us a pretty complete return?—If you like we will take a series of periods, and take all the true value cases out during those periods.

10131. It must be a long period?—Whatever period the Committee suggests we will take.

10132. What sort of number approximately do you consider the true value appeals; perhaps you will kindly look at that?—Yes.

Mr. *Carson.*

10133. Have you ever reduced a true value?—Oh, yes, we have. We have never reduced them as much as we have increased them in those particular cases. My sole object in referring to this return was to show that a great injustice would have been done if there had not been an opportunity of rehearing these cases in some way or other.

Chairman.

10134. Now we will leave that point. Before you became a Judicial Commissioner leave to appeal or to state a case was almost invariably refused, I believe, where the Land Commission affirmed the decision of a Sub-Commission or judge; but some change has taken place since Mr. FitzGerald came on the Commission?—That is so. I have been informed that during Judge O'Hagan's time and Mr. Justice Litton's time, when the Court of the Land Commission affirmed the decision of a Sub-Commission, they would not grant leave to appeal. Mr. FitzGerald and I think that if there is any arguable question at all, either party ought to have the right of appeal, and we give him the right either to appeal or to state a case.

10135. Now there is one point we heard something of, namely, your power of appointing a limited administrator for a deceased tenant, and a case was referred to of Fox *v.* Langan?—Yes.

10136. Will you tell us what happened as to that?—The way that stands is this: From the passing of the Land Act 1881, we always assumed that there was jurisdiction if a tenant had died either before the proceedings were commenced, or if he died after the proceedings had commenced, to appoint a limited administrator for the purposes of the proceedings, and that has been done in thousands of cases. Very often, as anybody familiar with these matters in Ireland knows, a tenant dies and either his widow or one of his sons goes into occupation and receives a receipt in the name of "the representatives of so-and-so," and that goes on for years. Then an originating notice is served by this person (either the widow or the other), and then, not having

Chairman—continued.

any strictly legal title, in such cases we used to give a legal title by appointing the person limited administrator. Doubt has been thrown upon that owing to the decision of the Exchequer in Fox *v.* Langan, in which two judges of the Exchequer (Mr. Justice Murphy dissenting) held that we had no jurisdiction to do that where the death had taken place before the proceedings were instituted.

10137. Then you think, as a matter of public convenience, it would be desirable, if any legislation were brought in, that all doubt should be removed with respect to those powers of yours?—I think it is desirable that what has been the practice there should be legalised, so that there should be no doubt.

Mr. *Carson.*

10138. Otherwise all these people would be future tenants?—Yes, or they would have to go and take out letters of administration.

Chairman.

10139. You have seen Lord Justice FitzGibbon's List of Appeals, and that List, I suppose we may take it, is correct; the appeals that have been taken to the Court of Appeal?—Yes, I have examined Lord Justice FitzGibbon's List. There are two trivial typographical errors. In 123 the result should be A and not D, and in 190 it should be D and not A. Under the head of 190 there should be two distinct appeals, in one of which the decision of the Land Commission was affirmed and in the other reversed.

10140. Now we will turn, if you please, for a moment, from your position as an appellate court to your position as a lower court, yourselves subject to an appeal. Since you have been a Judicial Commissioner how many appeals from your judgments have been taken to the Court of Appeal?—Since I was appointed Judicial Commissioner, to the end of the month of May of the present year, there were 113 appeals taken to the Court of Appeal from decisions of the Court of the Land Commission, or my decisions in some cases in which the Judicial Commissioner sits alone. Seventeen of these were struck out or withdrawn; they were not proceeded with; and therefore we may assume as a rule that the parties assented to the decisions below. At the time the Registrar's List was made out, one was under settlement; and two cases had not been heard, leaving 93 that were actually heard and disposed of by the Court of Appeal during that period. Of those 93, two were appeals from decisions of Mr. Justice Litton, and four of them were appeals from decisions of Commissioners FitzGerald and Wrench, who heard certain cases in which I had been counsel and did not wish to take part, and the result of it was that of those cases that were actually heard for which I was responsible, the number was 87; of these 59 were affirmed by the Court of Appeal, and 28 were reversed.

10141. Of those that were reversed, how many were in favour of the tenant?—Well, of the decisions reversed, 19 were in favour of the tenant.

10142. Were

Chairman— continued.

10142. Were those important cases?—Some of those 19 were some of the most important cases I have heard; for instance, Moylan *v.* Finch, that is a case of a letting by a tenant for life.

10143. We know the subject of these cases?—Then there was a case of Wakefield *v.* Robinson, that was a sub-letting; Boyle *v.* Foster was the great mill case; Spencer *v.* Tedcastle was a demesne land case; Thompson *v.* Lord Rossmore was a very important case of sub-letting; Stott *v.* Cramsie, although it was a case in which a solicitor was tenant, involved a very important question of principle, that I will mention later on, but these were all very important cases.

10144. Now upon the point raised as to the returns issued by the Land Commission concerning the number of cases dismissed, struck out, and withdrawn?—We were only able to get this document completed recently, in fact it only reached me yesterday; it took a great deal of time to make out. This is the return: there is a general summary, and there is a return for each particular county.

10145. This is a return of what?—It is a return of the cases struck out, withdrawn, or dismissed, which were heard by Sub-Commissions, it does not include county court cases; and one of the principal reasons for that is that unfortunately the orders in the county court often state no reason at all. Now I will give the Committee a short abstract of what that is.

10146. You put *this* in?—Yes. The total number of cases dismissed, struck out, or withdrawn, applications made to the Land Commission and heard by Sub-Commissioners, was 56,823. Of those the number struck out or withdrawn is 49,182, and the number dismissed 7,641.

10147. You are now going to deal with those 7,641?—Yes. Now I will just mention to the Committee shortly the headings we have put them under.

10148. Will you just tell us what does "struck out" mean exactly; we understand "withdrawn" and "dismissed"?—The meaning is this: The case was listed before a Sub-Commission; when it came on, nobody appeared, and it was struck out; and in most of these cases which were struck out or withdrawn it was because the landlord and the tenant had fixed a rent by agreement out of court, or some arrangement had been made by the tenant to get an abatement in his rent, and he thought it more advantageous to remain as he was than to go on with the proceedings. You understand that with those struck out or withdrawn we have nothing to do; it was merely that the parties did not choose to go on with the case.

10149. Are there no cases re-entered in these returns?—Some of these cases were re-entered afterwards; we point to some particular cases under the head of "Limerick," as well as I remember, which were re-entered, they might be struck out originally, because the tenant was unable to attend on the particular day; then if an application was made afterwards those would be reinstated as a matter of course.

Chairman—continued.

What this Committee is concerned with chiefly is the 7,641 cases that were dismissed. Now, I will tell you very shortly what the general result for all Ireland of these is. The first of them is "not agricultural or pastoral," 751; second, "demesne lands," 126; third, "town-parks," 442; fourth, "pasture holdings," 221; fifth, "holdings held by hired labourers or servants by reason of their employment," 52 (that is a very small exception); sixth, "lettings for temporary convenience," 142; seventh (and this is an important one), "not in occupation" (which includes sub-lettings, and which includes other cases besides sub-lettings), 1,469; eighth, "not a present tenant," 692; ninth, "irregularity of procedure," 627.

10150. What does that mean?—"Irregularity of procedure"? These are all cases which were struck out by the Sub-Commission for irregularity of procedure, probably the originating notice was not signed, the originating notice was not served, or something of that kind; we have no further indication, except the return from the Sub-Commission, that they had been struck out for some irregularity of procedure. In a few cases the particular irregularity might be mentioned; but from the time I was appointed Judicial Commissioner to the present moment no case was ever dismissed from my court for irregularity of procedure. I always amended, because I always found that no party was damnified in any way by any amendment.

10151. Do you take always the decision of the Sub-Commissioners that an irregularity has been committed as gospel?—When I mention to the Committee that these 627 cases were dismissed for "irregularity of procedure," the Committee may assume that in every one of these cases the tenants came in again; they had nothing to do but to set things right; those are not permanent exclusions. The next head I am coming to is also not a case of permanent exclusion. The next case is No. 10, "judicial rent already fixed," 633 cases.

10152. Will you explain that?—The way we find that is that sometimes after the lapse of some years a tenant who has had his rent fixed by agreement, or, indeed, who has had his rent fixed either by a Sub-Commission or by the county court, tries to come into court again; and very frequently he passes through the Sub-Commission without it being found out that his rent was fixed already. Sometimes, very innocently no doubt, it is where there has been a change of agent, or when the landlord's estate has got into Judge Monroe's hands; he serves his originating notice, but it is always found out in the end.

10153. How many cases of this kind are there?—Six hundred and thirty-three; therefore those are to be taken out because they are not damnified, they had had their rents already fixed. The next division also is a thing that may be deducted, "lands held under lease," 429. You are aware, Sir, of course, that under the Land Act of 1881 leaseholders could not proceed to fix rents immediately; they had to wait until the determination of their leases; but very often a tenant was tenant from year to year with a promise of a lease, and then sometimes he

Chairman—continued.

instituted proceedings to fix a fair rent, and very nice questions arose (as Mr. Carson, I know, remembers) as to whether the agreement was a binding agreement, and fixed the date from which the new term was to run; for if it was only a general promise of a lease for 21 years, and not a lease of 21 years from such and such a date, the tenant might go in as tenant from year to year, because there was not such an agreement as could be specifically enforced either by him or against him; but on the other hand, a great many went in against whom it was proved that there were binding agreements for leases, but all those have come in again now under the Act of 1887; again under the Act of 1887 some came in whose term was in excess of the term that was within the Act of 1887; they are within the term which is now provided for by the Redemption of Rent Act. Those went out, but have now come in; therefore those 429 who are excluded for holding under lease the Committee may assume all came in again, or might come in again. The next, No. 12, is "other causes," 891. At the bottom of the return the registrar has put down some of those "other causes." There are a great number of various causes, such, for instance, as "tenant would not allow inspection" (that should come under the head of "unreasonable conduct"); another "dismissed by consent"; "applicant refused to have rent fixed unless commonage or turbary was included in area"; "tenant ceased to have the interest in the holding." There are an immense variety of small cases, but now in addition to all that there are tenants who are evicted during the proceedings, but they are all in under some of those headings, and probably in under the head of "other causes," or the next heading I am going to mention now, the last of all, "grounds of dismissal not stated," 1,166. If, for instance, a tenant was a tenant at the time that he instituted his proceedings, but was evicted before the case came on for hearing (and the Committee knows that when there were a vast number of cases waiting for hearing all over the country, cases did not come on sometimes for a couple of years), by the time the case came on for hearing the tenant had been evicted for non-payment of rent, and his status had come to an end, and he was out. What I would say to the Committee in reference to that is that from the whole number of 7,641 you have to take off 627 for irregularity of procedure; you have to take off those who had had judicial rents fixed, 633. You have to take off those under the head of "lands held under lease," 429, which makes a total of 1,689, and that would leave 5,952, and that 5,952 is to be, or may be, further reduced in this way: I think there was some idea that persons had been "dismissed" in these exclusions in tens of thousands; we cannot fix the exact number, there are a very substantial number, but I think it is very much less than is generally supposed; some of these will not be probably "dismissed" for this reason: there are a number of tenants dismissed by not being in occupation of their holdings, sub-letting, or some other reason; a number of these have got up the occupation and have fixed rents afterwards. Several of these cases have come before me; as a rule they bought out the sub-tenant; they paid him a sum of money, got up the possession, and then proceeded to fix rents; and also there are others; the Committee may recollect, that under the Act of 1881, if a small portion of a holding was sub-let, no matter how small (unless it was actually insignificant), unless the tenant could prove that it had been sub-let with the consent of the landlord, out he went. Then, you know, the 4th section of the Act of 1887 gave relaxation in the case, first, of labourers' holdings, and next of trivial sub-lettings; some tenants whose applications were originally dismissed on the ground that they were not in occupation, came in under this 4th section of the Act of 1887 on the ground that the sub-letting was only trivial.

Chairman—continued.

10154. What do you say about those who, having found that they were excluded for one cause or another, never served notices?—We have nothing to do with those.

Mr. *Sexton.*

10154*. There were 49,000 withdrawn or struck out?—Yes.

10155. And is it not the fact that thousands of these have failed to come up or have given notice of withdrawal because in the interval between the service of the notice and the time of trial they have found that they were excluded under one head or another?—Those are struck out; we have nothing to do with them at all; we did not exclude them.

10156. No, I do not say you did, but may they not have remained out of court on discovering that they were excluded under one head or the other?—That is so; but my experience in fact is, whether they have any case or not, once they have served the originating notice they go on, that is my experience.

Chairman.

10157. Will you continue?—In addition to these there were some cases which were dismissed under the Act of 1881 as being town-parks, places having the three statutory requisites of a town-park, and then some of these have come in under the 9th section of the Act of 1887; they being in a position to show that although these three conditions existed the holding was let and used as an ordinary agricultural farm; those have come in again, and, on the other hand, as I said before, I say again, these returns include a number of evicted tenants, and we have no means of telling what the number of evicted tenants is. I endeavoured, in order to assist the Committee, and that they may have as much materials as possible, to see if it would be at all possible to get out the actual number who are permanently excluded; but it would be impossible to do so, because there are no means of tracing them; for instance (to take a case), Patrick Murphy served an originating notice, and he went out because it was found that he was irregular in his procedure, or something of that kind; then he died, and Mary Murphy, his widow, came in a second time.

We

Chairman—continued.

We should have very great difficulty in identifying the new case with the former case with the vast amount of business that there is in the Land Commission; it is quite impossible. *That* Table of Exclusions we have had prepared; but we will have a table also worked up for the Committee of the results of the appellate jurisdiction, the result of appeals. That is a table that takes us a long time to prepare. The new return will have one heading, which will show the result of cross appeals, quite separate from the other. I have not seen the appeal return which is being made out, but if the Committee make any suggestions they will be carried out.

Mr. *Sexton.*

10158. Will that return distinguish between appeals brought by the landlord and appeals brought by the tenant?—It will distinguish between appeals brought by the landlord and appeals brought by the tenant and cross-appeals, separate for each; and we will distinguish between cases where there is merely an alteration in the amount and cases in which there is dismissal, and in cases in which we reversed a dismissal and sent it back to fix a rent.

Mr. *Macartney.*

10159. Will it distinguish between the percentages, those under 5 per cent. and those over?—I do not like to commit myself to the form of the return, for I have not seen it; it is only in course of preparation; but I think it will show everything the Committee would desire, and if any hint is given we will add to it, or do anything else to make it clear and show the percentages of reduction as well as the percentages of increase in particular periods.

Chairman.

10160–69. We had a very interesting point raised in the evidence of Lord Justice FitzGibbon. We have talked a great deal about the statutory term, the rent being fixed for 15 years; of course we know that during the occupancy of a statutory term no application to the court to determine a judicial rent can be made until the last 12 months of that term?—Yes, that is so.

10170. In the absence, therefore, of any fresh legislation the fair rent to be paid during the second or further statutory term beyond the 15 years must be fixed in one of the years already described, in one of the years we have been examining to, that is to say, if next year a tenant applies to have the term extended for another 15 years he must practically begin the operation afresh in your view and go through exactly the same process as he went through in 1881?—Yes.

10171. Very well now, that is your view?—That is to say, that the present statutory term, with all its incidents, will come to an end at the end of the 15 years and if any tenant wishes to insure the advantages of the statutory term, he can have his rent fixed if he likes after the 15 years, and then the new statutory term will run from the expiration of the old one. If, on

Chairman—continued.

the other hand, he allows the judicial statutory term to expire without serving any notice to fix a fair rent, he goes on with his original tenancy, whatever it was, apparently at the fair rent; but then he is liable, if his tenancy is a tenancy from year to year, to be treated as an ordinary tenant from year to year, and have the ordinary notice to quit served on him. That is after the expiration of the statutory term, you understand.

10172. May we put it in this way: a tenancy from year to year does not, after the fair rent has been fixed, become a tenancy, perpetually renewable, for the statutory term of 15 years?—I think it is quite clear that the jurisdiction of the Land Commission upon this subject under the Act of 1881 was essentially a rent-fixing jurisdiction; the old tenancy, whatever it was, remained; but during the period of 15 years, if (as the Act says) the tenancy so long lasted, then it would be subject to statutory conditions, and the landlord could not serve a notice to quit unless there was a breach of those statutory conditions; but if the original tenancy is a tenancy created by a tenant for life (as in Peyton *v* Gilmartin), the Act does not give it any greater extension than it originally had, and that is obvious by the 4th Section of the Act as well as by the 8th. You recollect the 4th Section of the Act, which was not very much acted on, is the section which provides that if, either in the case of a present tenancy or a future tenancy, a landlord demands an increase of rent, then the statutory term arises if the tenant accepts the increase. Then it is provided that "where the tenant accepts such increase, until the expiration of a term of 15 years from the time when such increase was made (in this Act referred to as a statutory term), such tenancy shall (if it so long continues to subsist) be deemed to be a tenancy subject to statutory conditions, with such incidents during the continuance of the said term as are in this Act in that behalf mentioned." Now in that case there is no adjudication by any court at all; there is simply a demand by a landlord from a tenant of an increased rent, and an acceptance by the tenant of that demand, and payment of that increased rent. The statutory term arises in that case during 15 years if the tenancy "so long continues" (those are the words of the Act); it remains subject to these conditions. There is similar language in the 8th Section, which gives the tenant power under certain circumstances to fix a fair rent; and then it goes on to provide, in Sub-section 3 (page 245 of "Cherry"): "Where the judicial rent of any present tenancy has been fixed by the court, then, until the expiration of a term of 15 years from the rent day next succeeding the day on which the determination of the court has been given (in this Act referred to as a statutory term), such present tenancy shall (if it so long continue to subsist) be deemed to be a tenancy subject to statutory conditions, and having the same incidents as a tenancy subject to statutory conditions consequent on an increase of rent by a landlord," with certain modifications therein mentioned. The whole legislation is simply a rent-fixing legislation, and

Chairman—continued.

disables the landlord during a certain time, if the tenancy so long exists, from disturbing the tenant. I wish just to refer to a passage on that subject in Bruce *v.* Steen.

10173. It is at page 17 of your notes which the Committee have?—Yes. The present Lord Chief Baron, in Bruce *v.* Steen, 14 Law Reports (Ireland), page 426, said: "All the terms of the contract of tenancy (in respect of which the fair rent is fixed) other than that of the amount of the rent remain, and regulate the rights of the parties after as well as before such fair rent has been fixed"; and in Peyton *v.* Gilmartin, 28 Law Reports (Ireland), page 393, Mr. Justice Holmes says: "The legislation relative to the statutory term is based upon the continuance of the tenancy already existing, and does not involve the creation of a new tenure"; and the present Master of the Rolls, in Allen *v.* Derby, 16 Law Reports (Ireland), page 355, said: "All that the Land Act does is by negative words to impose on the landlord a disability to raise the rent or put out the tenant during the term." I have no doubt whatever that that is the true legal position.

Mr. *Sexton.*

10174. That is to say, the statutory conditions do not exist outside the statutory term?—No.

10175. And freedom from eviction except for a breach of a condition is only within the term?—The statutory conditions only exist during the term; if the term comes to an end the statutory conditions come to an end; but then, probably, lest I should mislead the Committee, I ought to say that the original conditions of tenancy, whatever they were, would remain. If there is a tenancy from year to year, there is an obligation by virtue of the tenure to pay the rent, and although the tenant is not bound by statutory obligation to pay the rent, he is bound to do so by the conditions of the tenancy.

10176. The same liability arises at the end of the statutory term as existed before the Act of 1881 was passed?—Yes; there is no doubt upon the subject at all, and that is the reason for re-fixing the rents; that unless the tenant acquires a statutory term, there is nothing to prevent the service of notice to quit terminating the yearly tenancy.

Chairman.

10177. Mr. Carson wishes to put to you what rent would the tenant pay on the day after the expiration of the statutory term?—Mr. Carson probably knows that that is a moot point, and it would be a very inconvenient thing that I should express any definite opinion on the subject, but my present opinion is, for what it is worth, that the fair rent goes on, and the original rent does not revive.

Mr. *Carson.*

10178. I thought there was no question that the original rent would not revive?—I think so.

Chairman.

10179. I should like to call your attention to some language used by Lord Justice FitzGibbon which interested the Committee very much. He said, in answer to Question 3427: "On that point I do not see in the Act anything about a 15 years' term excepted incidentally. I understand the position to be this: The rent is fixed for 15 years, and it goes on until it is altered; it cannot be altered during 15 years, but the tenancy continues and cannot be determined. After 15 years the rent is capable of revision, but if it is not revised I suppose it goes on as before; do you see what I mean?" I confess that after what you have said I am not certain that I do see what the Lord Justice means?—I should like to say what I think the Lord Justice does mean: that it cannot be determined during the 15 years' term, he never meant that it cannot be determined after the 15 years' term.

10180. He said in the next answer, "It is not a 15 years' lease; it is a lease for ever, that is to say, it is an undeterminable tenancy from year to year with power to fix or to vary the rent every 15 years." You see he says it is a lease for ever. Is not that in contradiction to your denial that it is a tenancy for a statutory term of 15 years perpetually renewable; surely there is a direct conflict of view?—What the Lord Justice means by that, so far as I can understand, is, that if it was originally a tenancy from year to year binding the estate, it goes on for ever, at the end of the 15 years it goes on; but he does not express any opinion, and I am sure he would not express any opinion that it could not be determined after the end of the 15 years.

10181. Would you mind listening to this in answer to Question 3433: "I know the idea of many people I have met with in litigation is that there is a 15 years' term; in my opinion there is not"?—I will explain what the Lord Justice means by that. A great many persons suppose that the tenant holds for a term of 15 years; that the tenancy is for a term of 15 years renewable from time to time. The true view that the Lord Justice puts, and which has been put by those judges to whom I have referred already, is, that the original tenancy from year to year is there, and remains, but that during a particular period of time, called in the Act the statutory term, it cannot be determined by the landlord.

Mr. *T. W. Russell.*] The answer of the Lord Justice arose first of all out of a question of mine, and I assure you that what the Lord Justice led me to believe, and I think also led the Committee to believe, was, that I was entirely wrong in talking about a judicial lease for 15 years; that the lease was for ever; but that the rent could be revised at the end of 15 years.

Chairman.

10182. I quite agree. The view that I carried away (and I do not know what you think of it) was that the rent would go on, whether the tenant filed an originating notice or not, at the rate fixed at the beginning of the term, and that if he liked after three or four years, or any other term, to apply again before the court for the rent to be revised, it was open to him to do so?—The view stated by the Lord Justice, as the Committee will see clearly from what followed afterwards

Chairman—continued.

wards, is this: that if the person who fixes the rent is a tenant from year to year, his tenancy from year to year goes on, and during 15 years the landlord cannot determine it, or put an end to it. If the tenant chooses to surrender during that 15 years, he can do so at any time; and the Lord Justice says that there is nothing in the Act to prevent it; but he cannot be compelled to go out of possession by the landlord. On the other hand, if his tenancy is subject to an infirmity, if his title is a bad one, if the tenancy was created by a tenant for life, it would be determined on the death of the tenant for life. But there is nothing in the Act of 1881, or in any Act, giving any increased tenure to a tenant from year to year. I look upon that as absolutely clear.

Mr. *Sexton.*

10183. Mr. Carson's question has not been answered, which is, whether the landlord at the end of 15 years can raise the rent?—The tenant cannot be disturbed; no notice to quit can be served on him until the end of 15 years. If he wants to secure his position he must go on asking for a statutory term from every 15 years to 15 years in order to ensure that he shall not be ultimately evicted.

Chairman.

10184. That is to say, that in your view every one of the cases in which a fair rent was fixed from 1881 onwards, when the 15 years have expired must go into court again if the tenant wants to be quite safe?—If the tenant wants to secure himself, to retain security of tenure, there is nothing in the Act to give it him unless he acquires a new statutory term, as the Committee will see at once.

Mr. *Sexton.*

10185. It all comes back to the same point, namely, that the statutory conditions exist only within the statutory term?—Yes.

Chairman.

10186. Do you take this position, which I think Mr. Carson put to you: Does the old rent revive in default of action by the tenant?—As I said in answer to Mr. Carson a few minutes ago, that is a question upon which I would not like to express any opinion; it is not perfectly clear, and it is very unwise that any person in a judicial position should express an opinion upon a moot question when he may afterwards have occasion to give a decision upon it.

Mr. *M'Cartan.*

10187. Do I rightly understand that at the end of the judicial term it will fall back into the present tenancy as it was before?—The present tenancy remains a present tenancy, and it does not cease to be the present tenancy at the end of the term.

10188. Yes?—It is the present tenancy for ever so long as the tenancy is not determinent.

10188*. With all its incidents?—With all the incidents of a present tenancy, and a present

Mr. *M'Cartan*—continued.

tenancy means, as you have frequently had explained, a tenancy which either existed at the time that the Act was passed, the 22nd of August 1881, or which was created in the following year, in a holding on which the tenancy was then subsisting.

Chairman.

10189. If all this be true, and no doubt your view is sound, though I find it difficult to reconcile it with all the language of Lord Justice FitzGibbon, has it occurred to you that it might be desirable to allow the tenant and the landlord to continue the tenancy without the process of going into court by simply filing, for example, some record?—At the end of a statutory term during the last year the landlord and tenant may enter into an agreement and declaration which would have the effect of creating a fresh statutory term. My views are entirely expressed by Mr. Justice Holmes in the case of Peyton *v.* Gilmartin: "The legislation relative to the statutory term is based upon the continuance of the tenancy already existing, and does not involve the creation of a new tenure"; and that is the same opinion as that of the Master of the Rolls and Chief Baron Palles, that the old tenancy from year to year remains and continues during the statutory term, and after the statutory term.

10190. We may leave this very important point now I think, and we come next to certain small details for a few minutes; you have some view that you would like the Committee to hear as to Ordnance maps?—Yes; it was an idea that I had that they might be useful in the future. At present we have no authentic map of all the holdings upon which rents have been fixed, and I thought it might be a very useful thing (and it would have been a very useful thing for this Committee, for instance) to see upon an estate upon which holdings judicial rents had been fixed, whether by agreement or by the Sub-Commission, or by county court order. Unfortunately in the early days of the Land Commission there were no maps used at all, and in cases where agreements and declarations have been filed, there are none at the present time.

10191. Where an agreement is arrived at is no map lodged now?—No; we have the maps now in the files of cases heard, but we have no general maps, and what I thought was that we might have in bound volumes the 6-inch Ordnance maps for the different counties, so that you could see at a glance the appropriate reference numbers, and looking over an estate you would see that rents had been fixed on so-and-so, and you would refer to the record and see whether they had been fixed by agreement or otherwise. Then if that had been done, the Committee would have been able to get information on the subject on which I see they have been trying to so get information, whether many tenants on one estate are still out, or whether they have come in or not. We can furnish no information on that subject.

10192. You have been good enough to place in the hands of the Committee some notes of yours going through a number of decisions upon exclusions and restrictions under the Act; I do not think that at this moment we will take you

Chairman—continued.

through all those cases, although some honourable Members of the Committee will no doubt be glad to hear what you have to say upon some of the decisions; but I should like to go on at once, if you will, to the view taken and acted upon in the Land Commission on the question of improvements arising out of the famous case of Adams *v.* Dunseath?—That is a most important subject, and I need hardly say a difficult subject, and I am sure that the Committee will bear with me if I endeavour to explain my views and the views of the Land Commission, because I think I shall be able to satisfy the Committee that there is not the slightest difference between the practice of the Land Commission and the views expressed by Lord Justice FitzGibbon. I think that is very important if I can show you that.

10193. Will you first of all tell us what was the effect of the Act of 1870 upon tenants' improvements?—The Committee know, and perhaps it is almost an impertinence to repeat it again, that before the Act of 1870 was passed a tenant had no interest or property in his improvements at all, except in the very limited case of fixtures, which are really not worth considering, tenants' fixtures.

10194. I think you may assume a certain amount of elementary knowledge in the minds of the Committee; we have been sitting here for 21 days, and we do know the somewhat elementary details?—I will give my views as briefly as possible now. The effect of the Act of 1870 was for the first time to give a tenant a special interest or special property in his improvements, subject to certain exceptions in the 4th Section of the Act; and I am not going to repeat those exceptions in the 4th Section of the Act, because I understand that they have been brought before the attention of the Committee over and over again. But then the Committee will understand that in cases in which those exceptions applied the tenant practically had no property in his improvements. To take, for instance, a concrete case: if a tenant having a holding valued at over 50*l.* a year contracted himself out of the Act of 1870, as he was empowered to do by the Act of 1870, and afterwards built a house, or reclaimed land, or made drains or fences, he had no more property in them than he had in the rest of his holding; he had the right of enjoying them during the continuance of the tenancy, but when the tenancy came to an end, there was no obligation on the landlord to make any compensation to him for those improvements at all. In the same way if he held under a lease for a term certain of 31 years or upwards, and he made drains or fences, then in a case of that kind he could get no compensation for either drains or fences, but he could, as the Committee knows, for permanent buildings and for reclamation of waste land. Now the effect of the Act of 1881 was, in the first place, to enable a tenant under the 8th section to have a fair rent fixed; and in fixing the fair rent the court was to have regard to the interest of the landlord and tenant respectively, and by Sub-section 9, which has been so often referred to,

Chairman—continued.

the same time no rent was to be assessed on improvements that were made either by the tenant or his predecessors in title. The Committee knows what the decision of Mr. Justice O'Hagan and Mr. Commissioner Litton was in Adams *v.* Dunseath originally, and that their original view was that the tenant was entitled, not merely to compensation or exemption from rent on his improvement works, but that he was entitled to the whole of the improved value of the land. That was not the view of the Court of Appeal in Adams *v.* Dunseath. The Committee knows already that in the first place one of the most important questions which they decided there was, first, that as regards the 9th Sub-section that it referred to improvement works and improvement works alone, and that the actual exemption was only in respect of improvement works. Now, as to what became of the residue of the improved value, there seems to be some difference of opinion between the different members of the court. Sir Edward Sullivan, in passages that have been so often referred to, showed that improvements must mean improvement works, and that the right to exemption from rent was, in fact, correlative with the right to get compensation under the Act of 1870; but there was an expression in his judgment which is referred to also by Lord Justice FitzGibbon, that as to the residue of the improved value it was possible that the Commissioners might have power to deal with it under the earlier portion of the section, that is, having regard to the interest of landlord and tenant respectively. Then, Chief Justice Morris, in his judgment on page 146 of the 10th Law Reports (Ireland), after referring to "improvements," said: "The word is defined in the Act of 1870 as 'any work which being executed adds to the letting value of the holding, &c.'; but the addition to the letting value is caused by the work *plus* the inherent qualities and capacity for such work of the holding; the latter is the landlord's, while the former is the tenant's." His view was that the tenant's interest was restricted solely to improvement works, and that the inherent qualities and capacity for such work of the holding was entirely the property of the landlord. And the same is to be found at the top of page 148 of the report: "As to the third question, the Commissioners, in order to determine a fair rent under the 8th Section, have to regard the interest of the landlord and tenant respectively. The interest of the former is the plenary interest in the holding, save so far as the tenant establishes, in diminution, claims under the Acts of 1870 or 1881. These claims constitute the tenant's interest." That was his view, that the only interest of the tenant that was to be taken into consideration under the 8th section of the Act of 1881 was his amount of compensation under the Act of 1870. And the Chief Baron is very much to the same effect. At page 158, for instance, the Chief Baron says: "If I be right in the conclusions at which I have arrived, namely, first that the tenant had an interest in improvements made by himself or his predecessors in title, as used in its wider signification; secondly, that there is in the

9th

Chairman—continued.

9th sub-section an intention not to transfer property in improvements from landlord to tenant; what remains to satisfy the expression in the 9th sub-section, 'improvements made by the tenant or his predecessors in title, and for which in the opinion of the court the tenant or his predecessors in title have not been paid or otherwise compensated by the landlord or his predecessors in title'? I answer that which can alone remain, unless some part of the property of the landlord in the improvements be transferred to the tenant, the interest of the tenant in the improvements, and this interest he can have in such improvements only as he had a right to receive compensation for." I will not refer to more of those judgments; I assume that the Committee has read them through.

10195. Lord Justice FitzGibbon read all the important parts?—Yes; but I want especially to call attention to Lord Justice FitzGibbon's judgment, and then also to a passage in his evidence. At page 179, Lord Justice FitzGibbon, after referring to the particular case that was put by Mr. Butt, says this: "It will of course be understood" (referring to the improved value) "that before any part of this difference is allowed to the landlord, the Lands Commission should estimate the present value of the improving works, or, as Mr. Butt well expresses it, should ascertain what would it cost the landlord to put the farm into its present condition, supposing the improvements had never been executed, and upon that amount the improving tenant is entitled to a just, and I would add a liberal return, while (except in respect of considerations of reduction and compensation) the landlord should not be allowed any rent whatever" (that is on the improvement works). "In respect of the full present value of the additional capital which his improvements have added to the holding, the tenant should be scrupulously protected in the enjoyment of a just and even of an ample return, but, after this has been provided for, the landlord is equally entitled to the return derived from the more active and profitable use of his interest in the holding." Here is a passage in Lord Justice FitzGibbon's judgment that is also the foundation of what he says afterwards: "I guard myself, as the Master of the Rolls has done, from saying that the whole surplus profit belongs to the landlord, as I do not desire to prejudge the question which is not now before us, but which may hereafter arise, whether the tenant under the Act of 1870 and 1881 has not an interest in the holding over and above his statutory tenure and his rights to compensation. Thus far, however, our unanimous statement of the rule appears to me to lead, the landlord is entitled, as part of the fair rent of the holding, to so much of any increase of letting value consequent upon improvements, after making a fair return to the tenant upon the value of the improving works, as is derived from the utilisation of the landlord's interest in the inherent qualities, advantages, and resources of the holding"; and again at the top of page 182 he sums it up in this way: "In truth, the fair rent and the allowance as against that rent for improvements are, as it seems to me, but the annual equivalents, calculated with regard to present value and future enjoyment, for the capital values of the interests of the landlord and tenant respectively, which upon the severance of their interests would be ascertained in fixing compensation." Having read so much, what I want to impress upon the Committee is this: that under the Land Act 1881 there is no provision by which specifically any interest other than exemption in respect of improvement works is given to the tenant in regard to the improved land. There is nothing in the Act, from one end of the Act to the other, specifically to give to the tenant, I repeat it, any special interest or property in the increased letting value of the land, if once he has been exempted from rent in respect of improvements; and his right, so far as I can see, subject to this exemption from rent in respect of improvement works, is the same in the improved land as in the unimproved land. Now Lord Justice FitzGibbon's evidence, I think, has given the Committee an idea that as regards the improved land the Land Commission had some power of apportioning the improved value between landlord and tenant different from what they had in apportioning the value of the unimproved land between landlord and tenant. Do I convey myself to you?

10196. Would it not simplify things if I were to read to you the view of Lord Justice FitzGibbon, the Lord Justice put his own view to the Committee, and then you could comment upon it as you were going to do. I think you ought to deal with his view as he himself stated it to the Committee?—You see in the very words of Lord Justice FitzGibbon's evidence he says this: "According to the interest of the landlord and tenant respectively." It was put to him by, I think, Mr. Sexton, several times, Had they discretion? and he says he thought that it would be wrong to say that they had an absolute discretion; it is a discretion controlled by the effect of the decision in Adams *v.* Dunseath as to what is the relative interest of landlord and tenant. It seems to me that that language of Lord Justice FitzGibbon was subject to misinterpretation.

10197. Will you let me read to you the language of Lord Justice FitzGibbon, and you will gather from that what impression he left upon the minds of the Committee, and what is the impression with which you have to be kind enough to deal. This is the kind of language which he used; at Question 3357 he said: "That question of how it was to be assessed, whether by first taking the cost and allowing a certain interest upon it to the tenant and the rest to the landlord, or by taking a proportionate value of tenant's interest and landlord's interest, and then dividing it; that was a question of valuation, and was taken from us." Then on page 187, at No. 3363, Mr. Sexton asked whether, "In saying that the tenant was to be protected in respect of what he had expended, you did not say, and did not mean to say, that the rest of the letting value was necessarily to go to the landlord?" To which Lord Justice FitzGibbon replied, "Not only not the whole of it, but in every passage in which it is referred to,

Chairman—continued.

it is stated that the interest of landlord and tenant respectively in that remainder was to be had regard to." Then Mr. Sexton asked at No. 3365: "All that is at the discretion of the court below by the judgment in Adams *v.* Dunseath?" And Lord Justice FitzGibbon's answer was: "I do not like to use the word 'discretion,' because that may mean that it leaves them to do what they like. Adams *v.* Dunseath did not leave them to do what they liked. It defined what was meant by the interest of the landlord and the interest of the tenant; the definition was limited by law, and then it said: You are to have regard to those two interests, but how much should go to one and how much to the other is for yourselves to decide." That is the operative passage?—Yes, that is precisely what I want to apply myself to now.

Mr. *Sexton.*

10198. And Lord Justice FitzGibbon said in answer to Question 3366, "It was for them" (that is the Land Commission) "to say how much belonged to the landlord and how much belonged to the tenant; and in what way they set about doing that was for themselves. If in the first instance they gave him 20 per cent., that might be enough for his whole interest; if, on the other hand, they only gave him 4 per cent., and there was a large increase of letting value, they ought to take into account how much belonged to the inherent quality of the land and how much was fairly referable to the tenant's interest"?—Of course this is an immensely important question, and it seemed to me that some of those answers were liable to more than one interpretation. The interpretation that has been given was to the effect that the Land Commissioners had been doing something which was different from what Lord Justice FitzGibbon had expressed, and therefore, as the Lord Justice and I are very great personal friends, I wrote him this letter which I am now going to read to the Committee, in which I stated my views in a way in which the Committee will see that there is absolutely no doubt as to what I meant. "My dear FitzGibbon,—There is an impression abroad, very erroneous, I think, as to the effect of your evidence before the Select Committee on the Land Acts in reference to the case of 'Adams *v.* Dunseath,' and you have seen, no doubt, statements in newspaper articles and elsewhere that the Land Commission, owing to some stupid blunder, has from the very first misinterpreted the decision of the Court of Appeal in that case. What has given rise to that impression appears to be your answers to Questions 3356, 3360, 3364, and 3365; but I take it that you were merely re-stating what you had already said in your judgment in 'Adams *v.* Dunseath'" (this is the cardinal point that I wish the Committee to follow), "and that you never meant to convey that, save to the extent of exempting him from rent in respect of improvement works, the Land Act of 1881 had given to the tenant of a holding any interest or

Mr. *Sexton*—continued.

right in respect of the portion improved by him different from that which he has in the unimproved part." I put that as clearly as possible in saying to the Lord Justice, Am I not right in saying that you never meant to tell the Committee that, save with the exception of getting an exemption in respect of improvement work, the tenant had any different interest in the improved portion from what he had in the unimproved portion? You will see afterwards that it is really only a difference in words, and that really the Land Commission, Mr. Bailey and Lord Justice FitzGibbon, were all at one on the subject, I think. "I understand the effect of your judgment in Adams *v.* Dunseath, and of your evidence before the Committee to be this. If after making an allowance to the tenant in the rent for his improvement works there remains any improved value of the land reclaimed or drained, the whole of it does not necessarily go to the landlord, because the tenant may have a tenant-right or interest in the holding quite irrespective of his improvements, to which effect must be given in assessing the rent." I put it distinctly: Is this the meaning of what you say, that if a tenant has been allowed exemption from rent on his improvement works, if there remains any improved value, it does not necessarily go to the landlord, but the tenant may have a tenant-right or interest in the holding quite irrespective of his improvements, to which effect must be given in assessing the rent. "To take a concrete example, if a tenant by an expenditure of 50*l.* reclaims 10 acres that were previously covered with water, and valueless for rent, and this land would now be worth 10*s.* per acre per annum if in the hands of the landlord, and an allowance of 5 per cent., *i.e.*, 5*s.* per acre, is made to the tenant in respect of his improvement work in fixing a fair rent, the remaining 5*s.* per acre is not necessarily the property of the landlord, but may be apportioned between the landlord and tenant, having regard to the 'tenant-right' of the latter." Now, there is no mistake about the view that I put to Lord Justice FitzGibbon in this. "But am I not right in considering that in your view precisely the same principle of valuation is to be adopted in respect of the unimproved land, and that if an acre of the unimproved land would be worth 5*s.* per annum in the hands of the landlord, the 5*s.* is to be apportioned in exactly the same way. I would not venture to ask you for an explanation of any of your judicial utterances, but when your evidence appears to me to have been misunderstood, and I shall no doubt be examined before the Committee on the same subject, it is not unreasonable, I think, to ask you kindly to let me know whether my reading of your evidence is correct. If you could send me a few lines within the next couple of days I should be greatly obliged. Very sincerely yours (signed) E. T. Bewley." Lord Justice FitzGibbon most obligingly wrote to me immediately. The first part of his letter was to ask me to get a revised edition of his evidence, saying that he did not know what might have been said, but that so far as knew he said, "I am not aware of any reason for imputing any 'blunder' or 'misinterpretation'

Mr. *Sexton*—continued.

interpretation' to the Land Commission in applying the decision in 'Adams *v.* Dunseath.'"

Mr. *Sexton.*

10199. If you intend to read Lord Justice FitzGibbon's letter I suggest to you that you should read the whole of it, because to read part of it and comment upon other parts would not be satisfactory?—I will just read one passage, and then hand the letter over to Mr. Morley. The reason why I do not want to read the letter entirely is that he says something in reference to an individual that he did not exactly follow. It is immaterial, but Mr. Morley shall have the letter. I will hand the original letter to Mr. Morley.

Mr. *Sexton.*] The letter must go on the Minutes, of course.

Chairman.

10200. You do not desire, as I understand, to put in Lord Justice FitzGibbon's answer to you?—I do. This passage is what I especially wish to put in.

10201. One moment; putting it in of course means that the whole letter will go on to the notes, or appear in an appendix. If you say that you do not want it to appear on the notes you will not put it in?—I am quite willing. All I can say is that the Lord Justice has not marked it "private," nor has he asked me in any way to withhold the letter; but I would ask the Committee to take the letter and read it, and, if they think that it should appear on the notes, let it do so.

10202. Your objection, as I understand it, arises on very delicate ground, as I have found out before now. Does your whole objection arise from the introduction of an individual's name in the letter, because, if so, we could get over that by leaving the individual's name in blank?—There is a certain passage that I do not think should go in (*the Witness handed the letter to the Chairman*).

10203. (*After looking at the letter.*) I must say that reading this passage I should be rather sorry if it appeared on the notes. It is nothing very serious, no scandal upon anybody, but I think it is a passage which Lord Justice FitzGibbon can hardly have meant to circulate?—But the sole object which I had in reading the letter at all was merely to show that the Lord Justice says that my letter is an accurate statement of his views.

10204. If I read the letter I may be able to suggest a course to the Committee and to you?—Certainly.

The Committee Room was cleared. After some time the Witness was again called in and the public re-admitted.

Chairman.

10205. The Committee after deliberation have come to the conclusion that you should be requested to read Lord Justice FitzGibbon's reply in full; that course you will take upon yourself?—I have no objection to that. "July 9, 1894, Dublin, 10, Merrion-square,—Dear Bewley, Yours of Saturday has only now reached me. I have not seen any newspaper reports of my evidence, and very few comments upon it. But I found the newspaper reports and comments so imperfect and misleading in the case of the preceding witnesses, that I called for and got the official notes before I gave my evidence. Please see that you have the revised proof of my evidence. It has been furnished to the Committee, and it gives the reference and quotations more fully and correctly than the rough proof. In all that I said as to Adams *v.* Dunseath I tried to follow the rule I stated at 3315, to take my answers from the authorised report, which is available for everybody, and speaks for itself. Any lawyer, and more especially the head of the Land Commission, has the same authority to interpret the judgments that I have, but of course they require to be carefully studied, and they cannot be interpreted without equally careful study of the Land Acts, and of the facts of the particular case. I am not aware of any reason for imputing any 'blunder' or 'misinterpretation' to the Land Commission, in applying the decision in 'Adams *v.* Dunseath.' But I have no knowledge of the method by which fair rents are fixed in cases of improvements, and any reports I have seen of the evidence of the Sub-Commissioners and valuers rather indicate that no definite or uniform method of estimating the relative interests of landlord and tenant has been adopted. I could not follow Bailey's evidence as to the action of the Land Commission upon this and other points, and he was so wide of the mark in his version of the decisions of the Court of Appeal that I could feel no confidence in his accuracy upon any other branch of his subject where others differed from him. But your letter seems to me to state accurately the view which I endeavoured to convey to the Committee, and which you will find repeated at 3497–3504. The erroneous interpretation referred to by the Master of the Rolls at page 137, by which the whole difference between the letting value before improvement and the letting value after the improvement was treated as exclusively belonging to the tenant, extended to all cases of improvement, whether any question arose as to their ownership or not. This was set right by the unanimous decision that it was for the Land Commission to fix the rent of the improved holding with due regard to the interest of both landlord and tenant in it as it stands when the rent is fixed. The decision that the interest of the tenant was to be 'ascertained,' 'defined,' 'checked,' or 'limited,' by the consideration of what he would get under the compensation clause, on leaving the holding, was that of six of the seven judges. But how the relative interests were to be worked out in figures in fixing the rent was not within the jurisdiction of the Court of Appeal. Whether it was to be done by first allowing a percentage upon outlay to the tenant, and then fixing a rent on the remainder, with due regard to both interests, or whether the whole value was to be dealt with on some more general

Chairman—continued.

general principle making a fair proportionate allowance for so much of the value as was justly attributable to the tenant's outlay, was a matter for the Land Commission. In the concrete example you put, and in every case in which the rent is fixed after deducting a percentage upon outlay for the tenant, I apprehend that the sufficiency of the percentage to compensate the tenant would have to be considered before you could say positively that he was not to get anything more deducted from the improved letting value before you fix his rent. But again, I say with Sullivan, Master of the Rolls, at page 139, 'all this would be for the Commissioners.' If this does not answer your questions, kindly say so. A careful reading of the reported cases to which the Committee has been referred is I think the best, if not the only way to supply the required information without risk of misunderstanding."

Mr. *Brodrick.*

10206. Would you kindly read the last words of the letter; what I want is, if you please, how Lord Justice FitzGibbon signs himself?—"Ever yours (signed) *Gerald FitzGibbon.*" The Lord Justice and I are friends from boyhood; and one of the reasons why I wished to state to the Committee that I wrote to the Lord Justice was this: that as for myself I might take the unworthy course of saying, Oh, when I came to the Land Commission this decision had been in operation for a good many years, and I did not disturb it; but for the reputation of Mr. Justice O'Hagan and Mr. Commissioner Litton, I thought it necessary to show this Committee (because I have only commenced to show it) that we have been acting entirely upon what the Lord Justice now admits to be the true meaning.

Chairman.] We will not carry your evidence further to-day. The Committee will now adjourn.

Tuesday, 17*th July* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. W. Kenny.
Mr. Carson.	Mr. Macartney.
Mr. Clancy.	Mr. M'Cartan.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Fuller.	The Solicitor General.
Mr. T. M. Healy.	Mr. Sexton.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. Justice BEWLEY, again called in; and further Examined.

Chairman.

10207. YESTERDAY we broke off at a point where you had read the letter of Lord Justice FitzGibbon. Perhaps you would now be kind enough to continue your demonstration of the identity of view between him and yourself?—Yes, I was telling you the result of that.

10208. You were going to explain to us how Lord Justice FitzGibbon's letter put his view on the same footing as your own?—Yes, I will just explain that as clearly as I can. I was going to call attention to the fact that Mr. Commissioner Litton, as he then was, in his judgment in Adams *v.* Dunseath (which the Committee will find reported in Macdevitt's reports, almost in the commencement, I think, the very first page), was clearly of opinion that a tenant had a certain goodwill arising from occupation, quite irrespective of his interest in improvements, and he dealt with that in the judgment, to which I do not think it necessary to refer the Committee at any length. He also went on, as the Committee already know, to express an opinion in the case of improved value arising from improvement works, that the improved value went to the tenant. So far as that latter view was concerned, the Court of Appeal were of opinion that it was incorrect, and that the improved letting value did not necessarily go to the tenant; but as the Lord Justice pointed out in his evidence given before this Committee, some of the judges (including the Master of the Rolls and himself) said that as regards the improved letting value, after an allowance had been made in respect to the improvement works, it was at least a question as to whether the Land Commission might not have some power of dealing with that under the earlier portion of the 8th section of the Act, that is to say, that in considering the relative interests of landlord and tenant they might possibly deal with the improved letting value, or rather the excess of it, after an allowance had been made in respect of the improvement work. In the Lord Justice's judgment in Adams *v.* Dunseath, as I mentioned yesterday (as well as I recollect at page 180 of the report), the words which he used in respect of this were these (at the end of page 179, 10th Law Reports (Ireland), "In respect of the full present value of the additional capital which his improvements have added to the holding, the tenant should be scrupulously protected in the enjoyment of a just, and even of an ample return, but after this has been provided for, the landlord is equally entitled to the return derived from the more active and profitable use of his interest in the holding. I guard myself, as the Master of the Rolls has done, from saying that the whole surplus profit belongs to the landlord, as I do not desire to prejudge the question which is not now before us, but which may hereafter arise, whether the tenant under the Acts of 1870 and 1881 has not an interest in the holding over and above his statutory tenure and his rights to compensation. Thus far, however, our unanimous statement of the rule appears to me to tend; the landlord is entitled, as part of the fair rent of the holding, to so much of any increase of letting value consequent upon improvements, after making a fair return to the tenant upon the value of the improving works, as is derived from the utilisation of the landlord's interest in the inherent qualities, advantages, and resources of the holding." Now the question that I put to Lord Justice FitzGibbon in that letter of mine, and which he has answered, in fact, is this: Is it not the fact that the Land Act of 1881 has not given to the tenant who has executed improving works, any property, save the right to be exempted from rent on improvement works in the improved portion different from what he has in the unimproved portion, that is to say, is not the Land Commission bound as much to apportion between landlord

Chairman—continued.

Chairman—continued.

landlord and tenant the letting value of the unimproved land as of, what I may call, the residue of the improved value of the improved land; and he says that that is an accurate view of what he intended to state to the Committee.

10209. Of course it is an accurate view of what he intended to state, but do you think that is reconcilable with his language in 3365, in which he represents the Court of Appeal as saying to the Land Commission: "You are to have regard to those two interests, but how much should go to one" (that is the landlord) "and how much to the other" (that is to the tenant) "is for you yourselves to decide." Surely, in those words he implied that the increase of letting value due to improvement was to be treated as if it were the improvement itself?—What the Lord Justice says in all these passages (speaking now from recollection) is this: That it is to be apportioned according to the interest of the landlord and the tenant as defined by Adams *v.* Dunseath. That is what he says: "According to the interest of the landlord and the tenant as defined by Adams *v.* Dunseath." He said in answer to a question, I think, of Mr. Sexton's: I would be wrong to say that they have any absolute discretion in the matter; they are bound to apportion it according to Adams *v.* Dunseath. Then what I ask the Lord Justice in this letter is this: Is not what you mean by this that if after an allowance has been made to the tenant in settling the rent in respect of the improvement works a residue remains, that residue does not necessarily all go to the landlord because the tenant may have a tenant-right (that is an occupation right) different from his right in respect of improvements. That is the way I put it to him so that there may be no mistake about it all. First, the way I put it was: "I take it that you were merely re-stating what you had already said in your judgment in Adams *v.* Dunseath, and that you never meant to convey that, save to the extent of exempting him from rent in respect of improvement works, the Land Act of 1881 had given to the tenant of a holding any interest or right in respect of the portion improved by him different from that which he has in the unimproved part." And then I also said in reference to that, "I understand the effect of your judgment in Adams *v.* Dunseath, and of your evidence before the Committee, to be this: If after making an allowance to the tenant on the rent for his improvement works there remains any improved value of the land reclaimed or drained, the whole of it does not necessarily go to the landlord, because the tenant may have a tenant-right or interest in the holding quite irrespective of his improvements, to which effect must be given in assessing the rent." He assents to that. I put a concrete example to him, and as far as the concrete example is concerned he only guards himself by saying, "Of course I do not commit myself and say that the allowance made to him is necessarily what ought to have been the allowance;" but he admits that principle; and I do not think myself that any judge could come to any other view of the decision of Adams *v.* Dunseath than what

Chairman—continued.

the Lord Justice there virtually says in answer to my letter, namely, that there was nothing in the Act of 1881 that gave to the tenant any special property in the improved part different from that in the unimproved part, save to the extent of exempting him from rent on his improvement works; but it left this most important question open, namely, whether you should not make an allowance to the tenant in respect of this goodwill arising from occupation (as it is sometimes called); and I was going now to point out to the Committee that it seems to me that from the commencement that is what the Land Commission has, in fact, done; they have, in fact, apportioned what would otherwise be the full letting value between landlord and tenant, because they have taken into consideration this (whatever you may choose to call it) tenant-right, or goodwill arising from occupation.

10210. But then, look at his answer to Question 3361. He was talking of letting value arising from improvements, and Mr. Sexton said: "Did the direction of the court, that the tenant was to be protected so far as the cost of his improvement was concerned, contain or involve any direction as to what was to be done with the rest of the letting value arising from the improvements?" Then he says: "It did in a case where that increased letting value on the facts was (for the reasons I have referred to) admitted to be part of the interest of the landlord."?—I do not understand that answer to 3361. I do not exactly follow; it is some special case. The only thing that occurred to me in reading that was this: It was admitted in a case I have referred to, to be part of the interest of the landlord. I think he was referring to an actual case; he was referring to the house in Adams *v.* Dunseath. There, the house in Adams *v.* Dunseath being treated (in the view he took) as part of the property of the landlord, then the whole increased letting value, as far as it was concerned, went to him.

10211. Of course, as a matter of practice, I think the Committee have gathered from your own officers who have come before us that it is their practice to give a percentage on the tenant's outlay, then to give the rest of the increased letting value, though due to the tenant's improvements, to the landlord?—I will not unduly occupy the time of the Committee upon this, but I intend very shortly to refer to the evidence of at least three of the witnesses, and show that that is not the whole thing.

Mr. *Sexton.*

10212. I submit to you that the answer of the Lord Chief Justice to 3361 cannot have referred to the case of Adams *v.* Dunseath, because in the case of Adams *v.* Dunseath, according to the judgment of the majority, the tenant had no interest whatever in the house erected before the lease?—According to the majority the landlord had an interest in the house.

10213. Certainly; therefore, the case cannot have referred to that?—I tried to understand that; I did not understand it; that is all I can say.

10214. I submit

Mr. *Sexton*—continued.

10214. I submit that it means this, that possibly a case might arise where, after the tenant is made an allowance for the cost of the outlay, the whole of the remainder might possibly belong to the landlord?—Oh, yes, of course. I think it appears abundantly on the evidence before the Committee already that in the great majority of cases, after the allowance has been made, there is nothing; in fact, there is no residue, so that to some extent, but not to the entire extent, it is an academic question.

Chairman.

10215. You were going to say something about practice?—As I understand the evidence, what I read is this: the allowance that is made to the tenant is an annual allowance based upon the value of his improvement works; that allowance is merely for the purpose of exempting him from any rent on the improvement works; it would be a mistake to suppose that it was repaying him the cost of the improvement works, because his improvements remain, and, if he should be dispossessed, he is entitled to claim compensation for the improvements. To put a concrete example: If, for instance, he has reclaimed land, he is given an annual allowance that will exempt him from rent in respect of the expenses of reclamation, but the actual capital value of the reclamation remains his property still, and if by any chance the tenancy should be determined in consequence of eviction for non-payment of rent, or otherwise, his right to claim compensation for that reclamation work remains quite as before. The only thing that the Land Commission is to take care of is that he gets a full and ample allowance in respect of it; so that he is not to be rented in any way for the improvement work. Now, I was going shortly to call the attention of the Committee to what seems to me to be the practice in reference to this: over and above that special allowance that is made, the letting value, both in the case of improved land and unimproved land, is virtually apportioned to a certain extent between the landlord and the tenant. I would first refer to some answers of Colonel Bayly in his evidence. You will recollect that Colonel Bayly has been a Sub-Commissioner from the very first, or at any rate from October 1881, and if the members of the Committee will turn to Colonel Bayly's evidence (page 215, Question 3818) in answer to a question of Mr. Kenny's they will see this, "In fixing fair rent" (he is asked by Mr. Kenny) "you do not consider at all what the competition value would be?—(*A.*) No, I do not. (*Q.*) Could you tell the Committee generally, on what principles you, as an individual Sub-Commissioner, have hitherto fixed fair rents?—(*A.*) On my practical experience, and from my knowledge of what such land is worth. (*Q.*) 'Is worth' to whom?—(*A.*) Well, worth to the tenant or to the landlord. (*Q.*) Do not you also consider, for the purpose of arriving at that, what it would be worth to the landlord if it were in his hand?—(*A.*) No, certainly not. (*Q.*) You do not.—(*A.*) No, I do not.

Chairman—continued.

(*Q.*) If it were in the hands of the landlord, lettable to the highest bidder, would it not be worth very much more than the rent you fix upon it?—(*A.*) Certainly it would be worth more. (*Q.*) So you regard it simply from the point of view of what it would be worth to the tenant?—(*A.*) Yes, assuming the tenant has the ordinary interest in the farm." That is to say, that he has some occupation interest; for turning now, again, to Question 3859 of Colonel Bayly's evidence, you find this: "You have stated that you do not take a competition rent and then make deductions, but you do estimate the value of the improvements, do you not, before you fix the rent?—(*A.*) Yes. (*Q.*) To what extent do you estimate or allow for any sum which may have been given for tenant-right?—(*A.*) You mean where a tenant purchases a farm? (*Q.*) Yes?—(*A.*) In my opinion that has put him in the shoes of his predecessor, and I consider he has an ordinary occupation interest; and I make no further deduction from that. (*Q.*) You make no deduction?—(*A.*) No further deduction. What I mean is this, that if I found the farm had been given by the landlord to the tenant free from fine of late years it would be very much higher in my valuation." Now there are two more answers of his, and that closes the reference to his evidence, 4218 and 4219. This is put by Mr. Sexton: (4218) "The evidence before us is, that you value a holding as it stands?—(*A.*) Well, as we see it, of course; as it stands. (*Q.*) That is to say, you fix the value of it as the value of it is, at the time, to the tenant?—(*A.*) Yes; of course, in doing so, allowing the tenant his interest in the farm." Now that is unmistakable, that, at any rate, Colonel Bayly, whether right or wrong (and quite irrespective of whether the land is improved or unimproved), in any case, does not value the land as if it were in the hands of the landlord, but he gives the tenant an allowance in respect of his occupation right. Turning now to Mr. MacAfee's evidence (5790, page 304), Mr. Sexton asks: "Suppose there were two farms side by side, similar in condition and value, one of them occupied by a present tenant and the other vacant, and that an outsider wanted the the second of these farms, and asked you to fix the rent for him that he ought to pay for that farm, would you fix the rent of the two farms at the same figure?—(*A.*) It would depend on our instructions; if we were asked to fix them on the same basis we should. But suppose the farm that was not occupied was in the hands of the landlord, and that the landlord had acquired the tenant's interest, in that case we would put a different rent on as compared with the farm where the tenant was in occupation and had the tenant-right or interest in his own hands. (*Q.*) Then the legal interest of the tenant is an element in fixing the rent?—(*A.*) Oh, certainly; in Ulster the tenant has almost as much interest in the holding as the landlord. (*Q.*) But everywhere in Ireland now the tenant has two distinct legal interests, has he not; he has the right of compensation for disturbance?—(*A.*) Yes. (*Q.*) And the right to compensation for improve-

Chairman—continued.

ments; I do not think he has a right to sell the tenancy, but he has the right to stay there for ever at a fair rent?—(*A.*) Yes, and I think there is very little difference made by most Sub-Commissioners in fixing a rent, whether inside Ulster or outside Ulster; that right is recognised, I think, generally. (*Q.*) Does the possession of that legal interest on the part of the occupying tenant affect the amount of the fair rent materially?—(*A.*) Oh, yes it does. (*Q.*) To what extent; is there any principle?—(*A.*) You cannot deal with it on general principles, because you have to take into consideration a number of things in finding out the difference; the situation, its proximity to a town or to some market, and in fact you must, in fixing a fair rent, deal with each individual case on its merits. (*Q.*) What you call the rent in the case of the person coming in, in the supposed case I put to you, is a competition rent?" That is, if they had the two farms, the one vacant and the other not. Now here comes the exact point. "(*Q.*) The difference which you allow to the present tenant because he is in occupation and has the legal right, brings it down to what you call the fair rent?—(*A.*) Yes, we might perhaps put 20*s.* an acre on as fair rent and 30*s.* as competition rent."

10216. Will you tell us, for I do not really clearly understand, what is the point to which all this reading of yours comes to?—The point I am going upon is this: What the Lord Justice FitzGibbon in effect (if you read his letter and mine together) says now is this: When I said the Land Commission might apportion the remainder of the letting value between the landlord and tenant according to the respective interest of each I merely referred to this tenant-right interest, which I am now referring to in this.

Mr. *T. W. Russell.*

10217. Does it not strike you that we shall have to take Lord Justice FitzGibbon's evidence as it was given from the witness chair, and not as it is interpreted by you?—Certainly, but what I am pointing out now is this: that there is an interest in the tenant over and above his improvements which is one of the interests which have to be taken into consideration in fixing a fair rent. The only ground in Adams *v.* Dunseath on which Lord Justice FitzGibbon said that he refrained from saying anything as to whether the whole surplus profit belonged to the landlord or not, was because there might be this occupation interest, or this goodwill, to which effect should be given.

Chairman.

10218. Yes, but I thought, and hoped, that we had left for the moment Lord Justice FitzGibbon, and I put to you this question, or rather I made to you this statement, and put a question upon it, that the various Sub-Commissioners (not all of them, but I think most of them—some of them certainly) have told us what their method is, namely to allow a percentage on the improvements, not a percentage

Chairman—continued.

that would ultimately repay the whole outlay, but an ordinary 5 per cent. on the expenditure on improvements, and the rest of the increased letting value due to those improvements they had put a rent upon. Now, I really do not think we much care what the views of the Sub-Commissioners are theoretically, but when I tell you that some of them have told us that that is their practice, I ask what remark you have to make upon it?—I do not think there is any difference at all between what I am endeavouring to express and the evidence given by the Sub-Commissioners, for this reason: Undoubtedly after they have made the allowance in respect of the improvement works there is nothing given specifically to the tenant *qua* increased letting value, nothing at all, nothing is given to the tenant *qua* increased letting value, in respect of the improved portion. But what I was pointing out to the Committee was this, that both in respect of the improved portion and the unimproved portion an allowance is made in respect of this occupation interest; and that is what the Lord Justice FitzGibbon refers to in Adams *v.* Dunseath, and that is what Lord Justice FitzGibbon refers to in his evidence given before this Committee.

Mr. *Sexton.*

10219. I think you have referred to Mr. Doyle as what you called one of the two "principal Sub-Commissioners," which seemed to me to be a curious distinction to make between them and the other two; they all appear to be equal, so far as we know. In number 2883, and succeeding questions, which were put by Mr. Kenny, he was questioned as to the difference between the competition rent and the fair rent, and he was asked this in 2884: "You would not make any deduction, then, in that definition from what the competition rent or the market-value rent would be in settling the fair rent?" and the reply is: "I take that. I never could understand the meaning of a deduction being made for the occupation right of a tenancy"?—That is his view.

10220. It is in direct conflict with what you say?—I regret to say that there does not appear to be perfect uniformity between the Sub-Commissioners as to the principles upon which they fix the rent.

10221. Let me point out to you that the evidence I have just read was the evidence of a legal Sub-Commissioner, who is entitled to lay down the law to the others, while the evidence you have quoted is only the evidence of two Sub-Commissioners, who must take the evidence from Mr. Doyle, or gentlemen in his position?—They must take the law from the legal Sub-Commissioner; I do not know how it is; apparently they may not have been instructed in the law; I am not at all prepared to endorse Mr. Doyle's view in the view that I humbly take. I think this occupation interest does exist, and should be respected and taken into consideration in fixing the fair rent. Then, in order to show at any rate that this is the view which some of the Sub-Commissioners and some of our best men take, I will refer to one other answer of Mr. MacAfee's (5865) to Mr. Dillon.

10222. Do

Chairman.

10222. Do you think we need go into Mr. MacAfee's evidence on this point; we have had the evidence, we know the evidence; it is in the minds of the Committee?—I am only going to refer to three more quotations, but it does seem to me very material in reference to this question.

10223. How can it be material what Mr. MacAfee said?—I think it is exceedingly material, in this way: I am afraid that I have not conveyed myself at all to the Committee on what seems to me to be a most vital point, namely, this, that Lord Justice FitzGibbon used language which implied that the Land Commission had some power of apportioning the increased letting value, after giving the annual allowance in respect of improvement works, between landlord and tenant according to their respective interests. Over and over again in his evidence he said, "But that is their interest as recognised by law." I am now referring to this to show that the interest he refers to of the tenant, the only interest that can be taken into account over and above the improvement, is this tenant right or occupation interest.

10224. Very good; but you surely do not add any force to that by quoting what Mr. MacAfee or Colonel Bayly said. I am only asking you, if possible (if it is convenient to you) to spare us any further readings from the evidence that we have in our minds, that is all?—Certainly; if you prefer that I should not read these quotations I will not do so.

Mr. *Sexton.*

10225. I should submit to you that after I have cited evidence from a legal Sub-Commissioner directly in conflict with the evidence relied upon by you, given by lay Commissioners, it would be material if you could quote from the evidence given here by any legal Sub-Commissioner, either Mr. Doyle, Mr. Bailey, or Mr. Greer, evidence in support of your view?—As regards Mr. Bailey, I do not think there is really any difference between Mr. Bailey and the view I take, in this way, that when he says no allowance is made, and that the entire is given to the landlord, it is because if he takes any concrete example, if he says that the lay Sub-Commissioners put 10*s.* a year upon the improved part of the holding, the meaning of it is that they put 10*s.* a year on it, treating it as in the hands of a tenant, making allowance for all the occupation interest, and therefore that the sum which they gave is a sum less than that which would otherwise be an ordinary fair rent. Then Mr. Roberts is the same. As the Committee seem to think that I am occupying too much time on the subject, I will merely refer to Mr. Roberts.

Chairman.

10226. Do not spare us in anything you think really material?—I will only give you the references to his evidence; 7927 to 7933, and 7937 to 7939, and humbly express my opinion that nothing short of legislation could transfer any of

Chairman—continued.

the improved letting value to the tenant over and above this annual allowance that is made to him in respect of his improvement works; that no decision of the full Court of Appeal, even if it was composed of seven members, could transfer property which originally was not the property of the tenant to the tenant, and that it has not done so either in Adams *v.* Dunseath or anywhere else; but then from the commencement, apparently, a number of the Sub-Commissioners at any rate have acted upon the principle that there is a certain occupation interest which every tenant has, varying according to circumstances, not any fixed amount, but varying, and that that is to be taken into consideration in fixing the fair rent, and that so far as that occupation interest exists there will necessarily be an apportionment; for instance, take a piece of land that is utterly valueless for rent.

10227. If we find that they always give a much larger allowance for occupation interest where there is a residue of increased letting value after giving 5 per cent. on the improvements, does not that seem to show that your view is not the view acted upon by the Sub-Commissioners. That is what we have found. You may call it "occupation interest," if you like; you may say it was a deduction made on the strength of the occupation interest, but if we find that an extra allowance is made for occupation interest where there have been improvements, is it not fair for the Committee to conclude that that was a recognition of the increased letting value due to the tenant's improvements?—They cannot give any more for the occupation interest in respect of the improved land other than what they give in respect of the unimproved land. That is merely what I would emphasize, and say that according to the best of my judgment, as the Act of Parliament now stands (I express no opinion on this nor on any other question as to the policy of this portion of the Act of Parliament or that), inasmuch as before the passing of the Act of 1881 a tenant's sole right in respect of improvements was to get compensation for improvement works, it would have required special legislation to give him any special or particular interest in the improved value of the land other than that which he had; and, as I have said, I do not think that has been given. That is what I have to say in reference to it.

Mr. *Sexton.*

10228. You have now evolved what appears to be a new theory, namely, that in fixing the letting value of a holding, before dealing with the improvements at all by way of deduction, account is taken, in fixing fair rent, of the interest of the tenant?—Yes, I think so.

10229. Now I call your attention to this evidence of Mr. Doyle, Question 7463 (examined by me): "You fix a fair rent at what a solvent tenant would be able to give?—(*A.*) That is my idea, but Colonel Bayly has expounded another which I do not agree with." That is evidence, relied upon by you, of Colonel Bayly. Then 7465, "The Act talks about the rent fixed to be paid by the sitting tenant?—(*A.*) It must be by the sitting tenant. (7466). The

Mr. *Sexton*—continued.

specific rights of the sitting tenant do not seem to you to indicate rents paid by him and none other?—(*A.*) Not the slightest; I do not know how such an Act could have been drawn. (7467.) Two lines down you are asked to have regard to his interest; how do you interpret that?—(*A.*) I interpret it as meaning 'to his improvements'; I do not know what other interest he has against the landlord for fixing the rent except his improvements; and there is no indication in the Act, as far as I can see, of any other suggestion, but of his interest in the holding in the popular sense which he can sell." And then, finally, 7470: "Does the 'interest' in Sub-section 1 mean nothing more than the 'improvements' dealt with in Sub-section 9?—(*A.*) In my opinion that is all; I do not see any other indication of any other meaning." Then Question 7474: "And you do not think that the legal revolution made by the Act of 1881, entitling the tenant to perpetual occupation, marked any such difference in his interest as should affect the rent?—(*A.*) I do not; it gives him a saleable interest as between him and the landlord"?—All I can say in reference to that is, that, as at present advised, I do not agree with Mr. Doyle in that; I think a tenant has an interest, by virtue of his occupation, which ought to be respected, and which I, for myself, invariably respect, in fixing true value.

Mr. *T. W. Russell.*

10230. Is it not a very serious thing, that men are sent over the country in this way with wrong ideas of the law?—Yes.

10231. To fix rents, and decide what is the law between landlord and tenant?—I intended to make an observation to the Committee upon that: Once we delegate a case to a Sub-Commission presided over by a competent legal gentleman, whether solicitor or barrister, the Land Commission, as a court, absolutely have no jurisdiction over that case until it comes before them on a re-hearing. I have no more business to instruct Mr. Doyle, or Mr. Bailey, or Mr. Greer, as to what their decisions in law should be in any particular case than the Court of Appeal has to instruct me, or to instruct the judges of the Queen's Bench or the judges in the Chancery Division as to what they shall do in a particular case.

Mr. *T. M. Healy.*

10232. Is not the word "delegate" used in the Act?—We delegate under the section of the Act. We may delegate, as I read it, any of our duties, except the power of hearing appeals; and, as a matter of fact, everything is delegated. This question was raised for the first time, as far as I know, before the Lords' Committee that sat in 1882, and the Lords' Committee made some strong observations on the Land Commission for not giving instructions, apparently, to the legal Commissioners in law, and to the lay Commissioners in matters of valuation.

10233. Clause 43 of the Act of 1881, just at the end of it, says this, "The Land Commission may form Sub-Commissions in any province, particular district, or districts of Ireland, and such Sub-Commissions shall consist of such number of the said Assistant Commissioners, or of a Commissioner and one or more Assistant Commissioners, as the Land Commission may think fit, and the Land Commission may delegate to any Sub-Commission such of the powers, except as to appeals, by this Act conferred upon the Land Commission, as they think expedient, and may from time to time revoke, alter, or modify any powers so delegated to a Sub-Commission." Now the head Land Commission itself is not a delegated body from the Court of Appeal; therefore Lord Justice FitzGibbon could not instruct the head Land Commission; but the position does not seem to be the same with regard to the Sub-Commission, does it?—No. As I said, the Lords' Committee reported on that; they say: "The Committee cannot but look with great regret upon the course adopted in settling judicial rents under the Act" (I am reading from the appendix to the Report of the Land Commission for the years 1882 and 1883 at page 36 of the appendix). "This duty, the most important, and at the same time the most difficult to be discharged under the Act, was in the first instance, assigned by Parliament to the three Commissioners named in the Act, whose names and standing were stated to be a sufficient guarantee that the duty would be effectively and impartially discharged. The Commissioners, however, proceed to delegate the whole of this duty to the Sub-Commissioners appointed under the Act, who now number 85." Now, on that Report, Mr. Justice O'Hagan, Mr. Commissioner Litton, Mr. Commissioner Vernon, and Lord Monck (who was then also a Commissioner) made a special report in this Appendix, and they say, "By the 43rd section of the Act the Land Commission was empowered to form sub-commissions, and to delegate to them such of the powers (except as to appeals) conferred upon the Land Commission as they might think expedient. It is apparently complained of that the Commissioners delegated the whole of the duty of settling judicial rents to the Sub-Commissioners by their order of delegation. It is not suggested, even remotely, how it would be possible to delegate this power in part and not wholly. The Act contemplated the delegation of the powers of the Commissioners to the Sub-Commissioners; and what exception or reservation could have been made (except the statutable reservation of appeals) the Commissioners cannot even conjecture." I would invite the attention of the Committee, to this special report, because some of the questions that have been discussed here were then discussed on another somewhat similar question.

Chairman.

10234. Which report is that in; the report of the same Committee?—This is a report of the Land Commission; we will have a copy sent in. I am afraid I have only this one bound copy of the report. The report for 1882–1883, after the report of the Lords' Committee had come out, contained an Appendix of "Observations

Chairman—continued.

tions of the Irish Land Commissioners on the Fourth Report of the Select Committee of the House of Lords on Land Law (Ireland)." The point I am referring to now is this: It was objected by the Lords' Committee that specific instructions had not been given to the lay Commissioners as to the mode in which their valuations were conducted. Here is what the Committee of the Lords reported: "And without having laid down any code of instructions or any general principles according to which the Sub-Commissioners should act. Some, at least, of the Sub-Commissioners were desirous of receiving such instructions, and one of them, Professor Baldwin, states that he thought at the time 'it was a frightful thing to let them loose on the property of the landlords and tenants without any instructions.'" Now, the observation of the Commissioners upon that is: "The Commissioners gave no instructions on this subject to the Assistant Commissioners, and to this moment they are absolutely at a loss to conceive what instructions they could legally have given beyond reading to them the terms of the Act of Parliament. The Legislature abstained from embodying any definition of a fair rent in the Act. It declared that the court should have regard to the interest of the landlord and tenant respectively, and to the circumstances of the case, holding, and district. Further enactments are contained in the succeeding sub-sections of the 8th section. What power or right had the Commissioners to add to the Statute by laying down extra-judicially principles, general or special, according to which the Assistant Commissioners were to act in their judicial capacity? If they had attempted to do so, they might have been most justly accused of directing a court of first instance; how to arrive at decisions which afterwards might come before the Commissioners themselves as an appellate tribunal." It then mentions another matter, which refers to the legal question as well as to this, namely, that it must be borne in mind that the jurisdiction exists also in the county court; that it is open to the election of the tenant or landlord, as the case may be, to institute proceedings in the county court, or in the court of the Land Commission. The Land Commissioners have absolutely no right to dictate to the county court judges either as to any matters of law, as to what construction they should put upon the Act, or as to what directions they should give to their valuers. It may be that that is an unsatisfactory state of the law; but if it is an unsatisfactory state of the law, I am afraid it must be remedied by legislation. As to matters of law. it would be impossible for me, for instance, to give any instructions beforehand to the eminent men we have, the able men we have, at the head of the Sub-Commissions, Mr. Bailey, Mr. Doyle, or Mr. Greer, as to what view they were to take on a question of law which had not yet arisen.

10234*. But surely this has arisen from your doctrine (it may be a perfectly sound one) about improvements, the relation between improvements and the increased letting value; and does it not strike you as a singular thing that these legal Sub-Commissioners should be sent out to do their work without any instruction from you upon what I may call, perhaps pedantically, an organic part of their work?—The answer to that is this: The executive appointed Sub-Commissioners; the appointment does not lie with the Land Commission; they appointed legal gentlemen to preside over the Sub-Commissioners, some very eminent, some exceedingly eminent (some who have passed away from us now), and these men were as competent, or might be certainly as competent, to interpret Adams *v.* Dunseath, or any other case, as any judicial Commissioner.

10235. Grant that; but is it not placing the Irish tenant and the Irish landlord in a most extraordinary position, as the Lords' Committee say, to hand over their property to gentlemen to be decided upon principles which may turn one way or another: not by virtue of an authoritative instruction from you whom they represent, but according to their own personal view, not the personal view applying a common doctrine to a particular holding, but as to the doctrine itself?—You cannot give instructions in reference to a question of law until a question of law has arisen, as a rule; you would be running very great risks if you did. That is dealt with also in page 37. Mr. Baldwin wanted instructions originally as to this very question of what was the meaning of the 9th sub-section of Section 8 of the Act as to exemption from rent for improvements; and what Judge O'Hagan and his colleagues say as to that here is this: "When, therefore, the Commissioners are assailed for not having given instructions to the Assistant Commissioners, it is quite possible that the ground might be shifted, and it might be asserted that the fault lay in not giving them instructions in point of mere procedure. But this question of Mr. Baldwin puts the matter beyond the possibility of a doubt. The complaint made by him, and now adopted and enforced by the Committee of the House of Lords, is this: That the Commissioners upon a legal question of the utmost difficulty and complexity, a question so difficult that the Court of Appeal in Ireland, after the fullest and most elaborate argument, were unable to concur in an unanimous opinion, and only decided by a majority; that upon such a question the Commissioners did not in the first instance, before the matter had arisen for decision, without having litigants before them, or hearing argument on either side, instruct the Assistant Commissioners in the interpretation of the statute. To have done so would, in their opinion, have been grossly culpable. That the witness, who is not a lawyer, should make this complaint does not surprise the Commissioners, but that it should have received the sanction of such a body as the Committee of the House of Lords, is a thing they would not have deemed possible until they read the report." I can only say that that is the view taken by my eminent predecessor and his colleagues so far back as the year 1883, and that in the view I take of the law it is not within my jurisdiction as matters now stand to give Mr. Doyle or Mr. Bailey or Mr. Greer any direction on any question of law, but

Chairman—continued.

that it is the right of the suitor to raise the question and have it brought before us on appeal.

Mr. *Sexton.*

10236. Mr. Doyle has been fixing rents in Ireland for 12 years as the head of a Sub-Commission, and many cases have come from him to you; have you ever reversed his judgment upon the ground that in fixing the rent he made no allowance for the occupation right of the tenant, but treated the tenant as a stranger?—No such question was ever raised; nor should we know anything about it, except for the evidence here; but I would not like it to be assumed that he did so.

10237. He tells us that he did so?—That is what he says; but as you see a great many of the lay Sub-Commissioners seem to act upon their own views in this matter, and they do not go to the legal Sub-Commissioner for his directions; and if we take Colonel Bayly, for instance (who is actually working with Mr. Doyle, and I believe has been working with him for some time), it is plain to me that he does take the occupation interest into consideration.

10238. Assuming that Mr. Doyle's evidence is a true account of what he has done, then it follows that for 13 years he has been controlling Sub-Commissions who fix the rents?—But I do not think it has been done. I do not think that assumption ought to be made, because you have on the one hand the fact that Colonel Bayly is working with him, and Colonel Bayly says that he takes this into consideration and gives the tenant the occupation interest.

10239. Colonel Bayly, and every other lay Sub-Commissioner who has been examined here, tell us that they take the law from their legal Sub-Commissioner; and what I ask you is this: If Mr. Doyle has been doing what he says he has been doing, has he acted in your view contrary to the law in that respect?—In relation to that, up to the present moment, so far as I know, this question of the legality of the occupation interest, or any question about it, has never been raised before the Land Commission Court. There has been no decision on the subject, and, therefore, I would be very slow to say that anybody is wrong or right until the question is raised. I looked carefully to see if I could discover whether Mr. Justice O'Hagan, or Mr. Commissioner Litton had ever decided any question in any case in reference to the question that is now raised on the construction of Adams *v.* Dunseath as to the apportionment, as one may call it, of the increased letting value, and no such question was ever raised or decided, so far as I know, upon the point.

Mr. *T. W. Russell.*

10240. For the best of all reasons, that the tenant considered the law as administered by the Commissioners to be settled law?—And my view

Mr. *T. W. Russell*—continued.

of it is that as actually administered, so far as I can ascertain the, Commissioners were administering it according to the law, because they were taking into consideration, in fact, the occupation interest, and in law that was the only interest which they could take into consideration over and above the interest in improvements.

Mr. *Sexton.*

10241. Have you, as the Appeal Court, as a matter of fact, generally reduced the rents sent up from Mr. Doyle?—I am sure we have, over and over again; not on any such specific ground, because no such question was raised before us; and in order that the Committee may understand exactly what happens, after the tenant has been examined, and proved his improvements, and so forth, his valuer is examined, and says, "I value the holding at so much per annum as in the hands of a tenant,"—the sitting tenant. Sometimes he is asked the question specifically, Would you give the same amount if it were in the hands of the landlord, and he would say, No, I would give more if it was in the hands of the landlord. That is what the tenant's valuer says, and as a rule the landlord's valuer adopts the same course; but some of them do not.

Mr. *Macartney.*

10242. The evidence of Mr. Greer and Mr. Doyle was distinct upon this point, that they gave no instructions to their lay colleagues as to the value that they were to place upon a farm; that the only instruction that they gave to their lay colleagues was when questions of law arose as to specific improvements; but that when no question of law arose before them in court as to whether the improvement was to be credited to the landlord or the tenant, and the tenant had claimed the improvement as his improvement, they left their lay colleagues to assess the value of the farm and its improvements entirely unfettered. That would account, therefore, for the fact that no question has been brought before you on this particular point?—I should rather have expected that the Assistant Commissioners, legal and lay, would have discussed amongst themselves the legal principles in reference to this very question of occupation.

10243. The evidence is the other way?—Then apparently they have not done so.

Mr. *Sexton.*

10244. This is so vitally important about the principle of fixing a fair rent. I have not been able to get Mr. Bailey's evidence yet, but I have got Mr. Greer's, and I would like to get on record now, if you will allow me to bring it to your mind, the evidence of Mr. Greer, another legal Sub-Commissioner, at Nos. 8605-7. "(*Q.*) Does your Sub-Commission fix fair rent as if it were being fixed for a solvent person coming into the farm?—(*A.*) They do, so they inform me. (*Q.*) So the tenant's interest is whatever interest you may give him in his improvements?—(*A.*) Yes. (*Q.*) In fact, the rent is fixed just as if the Act of 1870 or the Act of 1881 had never passed,

Mr. *Sexton*—continued.

passed, except so far as regards the right to improvements?—(*A.*) Yes, that would be the result." That is the second legal Sub-Commissioner?—That is so.

10245. I would further ask to have placed on record two extracts from the evidence of Mr. Bailey, the legal Sub-Commissioner, which I have now got at Question 1471: "Is it correct to say that the Statute, in directing you to fix a fair rent, laid down no principle, but left the principle of the fair rent to your discretion?—(*A.*) Yes, that is so;" and then, at Question 1472, "How do you define a fair rent?—(*A.*) We generally consider a fair rent one that a reasonable man would himself give for the holding;" and then at Question No. 1484, Mr. Bailey, being asked the proportion between fair rent and surplus profits, said this, "The valuers who value the holding will say to themselves, 'if I were to take this holding as my own farm, and to give a rent for it, I think, after giving me a fair proportion of the return from the land (what I consider as a farmer to be a fair proportion of the return), I would pay for it so many shillings an acre.' That is the way they arrive at it"?—You will see in Mr. Bailey's evidence afterwards, I think, that he said that they took into consideration the fact of the land being in the hands of the tenant.

10246. I understood not; we can look at that afterwards. Here is also what Mr. O'Keeffe said at Question 6209–13 "(*Q.*) Do you value a farm, the rent to be paid by the present tenant, as if you were valuing it for a new comer who wanted to come in as a tenant?—(*A.*) Well, that is my principle. I value a farm as if it were a thing that a farmer with capital and skill wanted, in order that he might have a proper return for his capital and his skill. (*Q.*) As if he were coming in?—(*A.*) As if he were coming in. (*Q.*) What do you take off that in order to make the fair rent to the present tenant?—(*A.*) I would only take off the improvements that I would regard as the difference between what is called a competitive and what might be, and has been, described as an economic rent. (*Q.*) So that where there are no improvements the rent paid by the present tenant as valued by you is the same rent that would be paid by a new comer into the farm?—(*A.*) If I were going to take land myself for my own purposes, that is what I would do, that is if I was not driven from any special circumstance to pay more than the value. (*Q.*) Under those circumstances, what becomes of the value of his occupation right, his right to remain in possession as long as he pays his rent; is it at all calculated upon the rent?—(*A.*) No, I do not think it is; I do not calculate it upon the rent."

Chairman.

10247. Now, I think I will leave it to other Members of the Committee to ask you questions as to certain cases in which you have given important decisions. I would like, before I close my examination, to ask you whether you have any suggestion to make to the Committee with regard to improving the procedure in fixing a fair rent?—Long before this Committee was ever suggested,

Chairman—continued.

the Commissioners, and notably Mr. FitzGerald and I, who were always going about together, have talked the matter over from time to time, and we have seen how disastrous (I cannot use a milder expression) it would be both for landlords and tenants that the majority of cases should be settled by litigation at the end of the first statutory term; and the opinion that we arrived at generally was very much the same as that expressed by Mr. Bailey, without any communication with us at all,—to the effect that we think that the Land Commission ought to have power, which could be got by a very slight amendment of the statute, to send down one of our Assistant Commissioners or court valuers; of course, they are the same.

10248. You mean a lay Assistant Commissioner; a lay man, not a legal Commissioner?—Yes, a lay Commissioner. We think that the Land Commission ought to have power to send down one of them, on notice to the parties, to the holding to proceed in exactly the same way as they do at present, but in addition in the presence of the parties to investigate the question as to the improvements made by the tenant, to estimate the capital value of the tenant's improvements, and, of course, to estimate, then, the annual allowance to be made in respect of those improvement works, and to estimate the value of the buildings in case the buildings are the landlord's.

10249. Why do you say the capital value; that is the first that we have heard about that from you?—I mean to say, the then present value of the improvements, because I think it will be important to give the parties an opportunity of seeing (what they have not an opportunity of seeing at present), what sum had been estimated as the value of the improvements, and also what deduction had been made in respect of the improvements. Then in those cases in which the houses were the landlord's, in the same way to estimate what annual value should be allowed, and then to report to us all those different things, and as the result of that to report what would be a fair rent for the holding.

10250. Are you proposing to send down on this scheme two valuers or one?—I think that on account of the immense number of cases, one would be sufficient; I would rather have one good valuer than two doubtful ones. There are other small matters to be taken into consideration, not small in reality, but not so important as to be mentioned to the Committee; that is to say, rights of turbary and rights of grazing, and making allowance on the other hand for want of water, difficulty of approach, and so forth.

10251. In short he would do exactly what the Sub-Commissioners do now?—Yes; he would then fix the rent conditionally, and let it be the right of either party, if he thinks fit, to go before the Sub-Commission; they would have materials to know then exactly what has been allowed in respect of improvements; and the actual amount of improvements that the tenant had made, so many acres of land reclaimed, so many perches of drains made, so many perches of fences, what the capital value was supposed to be of that, and what the allowance was.

Chairman—continued.

10252. You would suggest putting on to the face of the report the amount allowed for each item as an improvement?—Yes; I think that is very important.

10253. You send down your valuer or Assistant Commissioner?—Yes.

10254. And he makes his report?—Yes.

10255. Then you make a conditional order?—Yes.

10256. And that conditional order would be made absolute in case of any party objecting?—Yes; if any party objected he would go before the Sub-Commission.

10257. In case any party objected it would go before you, or the Sub-Commission?—Before a Sub-Commission; just exactly the same as at present. But in my opinion in the very large majority of cases the parties would acquiesce in the rent so fixed. There was one point that I intended to refer the Committee to; I do not know whether you would like me to mention it now, or later on. I think that on the re-fixing of rents at the end of the first statutory period, the number of legal questions that arise would be comparatively few, and I think so, for the reasons that I would like to state to the Committee. There is an important matter which I do not think has yet been brought under the attention of the Committee, and it is this: that if the Land Commission decide on the fixing of a fair rent that the holding is not one excepted from the Acts, as for example, if the question is raised specifically as to whether it is demesne land or pasture, or a town-park, assuming always that the relation of landlord and tenant exists to give them jurisdiction; that decision in my opinion is absolutely binding on everybody.

10258. Are you on the point of estoppel now, which was raised, I think, by Mr. Bailey?—There was a question put to Mr. Bailey by Mr. Healy, which I think Mr. Bailey answered hastily; I am perfectly certain that he assented too readily to what Mr. Healy suggested to him. It was suggested that if on the hearing of a case before a Sub-Commission, the Sub-Commission decided that the lands, for instance, were not demesne lands, it would be possible for the landlord, not taking any appeal at all, to give notice to quit and bring an ejectment, and that then the same question could be tried either in the Civil Bill Court, if the jurisdiction admitted it, or before one of the Common Law Divisions. In my opinion it is impossible to do that. There is one principle of our law which is absolutely well settled; that if you have a court of competent jurisdiction, and it has decided a question that was actually raised, the same parties can not raise the same question; it is what is called *res judicata*. If, for instance, the Land Commission, who under the 48th Section, Sub-Section 1, I think it is, are given special powers and jurisdiction for the purposes of the Act, to hear and determine all matters whether of law or fact, have decided on a question of law like this, and no appeal is taken, I am happy to say that the question is settled once and for all. I think it is settled absolutely, as between the parties; that it is perfectly certain and

Chairman—continued.

unarguable. I think that it is settled between the immediate parties to that decision. But there is a question which I should like to mention to the Committee that is open for discussion: whether the decision of the Land Commission in such a case is in the nature of what is commonly called a judgment *in rem*. Lord Justice Fitz-Gibbon referred, I think, to that question of a judgment *in rem* in an Admiralty case, and so forth; but the meaning of a judgment *in rem* is this: it is when the court, having a special jurisdiction, has decided in reference to the status of a special subject-matter, whether it be the status of a person or the status of a thing. Now, the Land Commission is invested with complete power to decide the status of a tenant as to whether the tenant is, for instance, a present tenant, whether he is the tenant of a holding to which the Act applies or not; whether he is a tenant in occupation; the Land Commission have absolute powers as to that; and I think that when once they have determined the question of status, it is not open to any other tribunal, or any other person interested, to reopen the question. The only way that the question would arise at all, and be arguable, would be if the rent had been fixed when the landlord was merely a tenant for life, the tenancy being, however, one that affected the estate generally; if the question of demense land was raised there, and decided adversely to the tenant for life, it might be arguable whether the remainder man who came afterwards, on succeeding for a statutory term, could raise the same question again. In my opinion he could not.

10259. It would follow generally from what you are now saying, that when the time comes to re-fix judicial rents the legal questions at issue will mostly have been decided, and decided finally?—Most of them will have been decided before.

10260. And they will not be re-opened?—There will be no question; neither as to these town-park cases which have been taken inside the Act, nor as to demesne lands, and so forth.

Mr. *T. M. Healy.*

10261. How is that to be proved?—Probably it will appear in the evidence.

10262. How?—We have a note of the evidence of all the cases.

10263. Do you suggest that you look back to your books for 15 years to see what was done 15 years back?—Yes; we now have a shorthand writer going down with the Commission, taking a verbatim note, as verbatim as the shorthand writers here.

10264. That is in cases which are appealed?—You are quite right, in Sub-Commission cases the Sub-Commissioners would have to go to their books.

10265. And there is nothing whatever to stop the landlord in an ordinary case where there has not been an appeal, and there is only an appeal in one-tenth of the cases?—There is nothing, unless there is a living witness who could show that the question was raised; but I was going to say that in reference to other questions, in 15 years you will generally find somebody alive who

Mr. *T. M. Healy*—continued.

was connected with the case. But a very important question will arise again, I regret to say, the very important question of sub-letting, or being out of occupation.

Chairman.

10266. There are two questions, of course; occupation is one, which you regard as unsatisfactory?—I think that the law is in a very unsatisfactory position in reference to that, and if the Committee would allow me I would make some suggestion as to an amendment of the law, because I think there is a great deal of hardship, and that a great many persons are left out of the Acts who have just as much right to come within them as anybody. Now I will explain to the Committee the difficulty which seems to me to have arisen. In the first place I think that the main purpose of the Act of 1881 was to exclude middlemen, that is to say, men who are not *bonâ fide* occupying tenants, or tillers of the soil, but who live by the rents that they get from the actual occupiers. And on the other side the framers of the Act desired that so far as possible occupation should be a condition necessary to entitle the tenant to have a fair rent fixed. That was modified, as the Committee know, originally, by the clause in the 57th section, that if a tenant sub-lets part with the consent of the landlord he shall, notwithstanding that sub-letting, be deemed to be in occupation of his holding. In reference to that it seems to me that the framers of the Act were only thinking of yearly tenancies at the time. We all know that, originally, yearly tenancies were the first tenancies that would come in; leases would not come in until the expiration of the lease; and the reason why I say so is, because, although the yearly tenant had, in law, complete power to sub-let, in fact, and in practice, he could not do so without the consent of the landlord, because as a rule landlords object to sub-letting, and sub-division; and if he did sub-let without consent, of course the landlord might serve notice to quit, and get rid of both him and the sub-tenant, and probably put him back again with the sub-tenant got rid of. Therefore in practice, in all such cases the tenant could not safely sub-let without the consent of the landlord. On the other hand, in ordinary leases, that is to say, leases not made during the period when the sub-letting Act was in force, between the 1st of June 1826 and the 1st of May 1834, nor leases that contained an express clause against sub-letting, the tenant might sub-let as he pleased; he never thought of applying to the landlord for consent, because his consent was not necessary. Therefore on the same estate you may have one tenant who is a tenant from year to year, and one tenant who is a leaseholder; the tenant from year to year asking permission to sub-let, and the tenant holding under lease never dreaming of asking permission, because he did not require it. But now, supposing that both have sub-let, and that both come into court, the man who is a tenant from year to year, and has got permission is within the Act; the man who has sub-let without permission is outside the Act, unless he comes within the amending section of the Act of 1887, and shows that it is a trivial sub-letting.

Chairman—continued.

10267. Your suggestion is what?—I should like to mention another thing before I make the suggestion. The Committee also know that cases in which sub lettings were made, before any lease was granted to the tenant, by the landlord and not by the tenant, do not come within this saving clause at all. For instance, if the landlord leases 100 acres to A. B., there being on the land at the time two sub-tenancies created previously by the landlord, that is not within any saving clause at all; it is not within the saving clause of the Act of 1881, nor is it within the saving clause of the Act of 1887, and he must go out; and, necessarily so, as the Committee will see at once. You cannot extend it at all, and for this reason, that otherwise any middleman could come in. Take a case not of 100 acres, but of 600 acres, all in the hands of sub-tenants. The middleman could get possession of one portion, buy up one portion from one tenant, and then serve notice to fix a fair rent; and if the letting with an existing tenant on it was to be deemed a consent of sub-letting, there would be nothing to prevent him fixing a fair rent. What I respectfully think would be a fair solution of the matter is this: that extensive sub-letting should not be encouraged at all; it is very injurious. If that were the case, then if a fractional amount (I should not venture to put any figure upon it), has been sub-let, I think that the tenant ought to be allowed to fix a fair rent, but subject to the following conditions: If some of the sub-tenants are sub-tenants merely of labourers' holdings, they should be left with those holdings as sub-tenants; but if they are sub-tenants to any substantial extent, say, to the extent of 10 or 12 acres holding ordinary agricultural holdings within the Act, I think that they should be made immediate tenants to the head landlord; that is to say, that in practice a tenant who chooses to avail himself of the Act should be enabled to surrender to the head landlord those larger tenancies, retaining the smaller tenancies for himself. And I say that in the interest of the smaller tenants, because my experience is that often they pay substantially higher rents than I think they would pay if they were under the head landlord, because it is one of those cases in which two rents are paid out of the same portion of land. As I say, I will not suggest what the particular fraction would be; but I think if the Committee would allow me, I might make another suggestion of a similar nature in reference to a very large class of exclusion. Unfortunately, as we know, sometimes tenants are excluded (I have excluded many by decisions of my own) when a small portion of the holding is of a non-agricultural nature, and entirely outside the Act. There is a case that has been referred to here more than once, the Tolls case of Freshford, in which there was a small collection of tolls, not more than 10*s.* a year. That was outside the Act for several reasons, but, amongst others, because this thing was not land at all.

10267*. We have had the Freshford case before

Chairman—continued.

before us?—Then in the case of a mill holding; we tried to fix a rent in Boyle and Foster, and in various other cases of that kind. In all these cases in which a portion of the holding is excluded by reason of its not being within the Act, I would give the tenant power to surrender the non-agricultural portion, or the portion not within the purview of the Act, and to fix the rent upon the remainder. I do not think it would be desirable for the Land Commission to undertake to fix rent on tithes, or tolls, or fisheries, or various other things, or even on public-houses; but if the tenant wishes to get the status of an ordinary agricultural tenant, it is no great hardship on him to give up the portion outside the Act, and to have a rent fixed on the remainder.

Mr. *Sexton.*

10268. Why should you not fix a fair rent upon the part that is admittedly within the Act, leaving the other part to be dealt with otherwise. If there was a small bit of demesne land, and the rest unquestionably within the Act, why not fix the rent?—I would have him give up the demesne land, and fix the rent on the remainder.

10269. Why should a surrender be necessary?—I will tell you. The reason why a surrender is necessary is this. I make a promise of general application and I apply it to cases like that tolls case, and other cases of that kind, in which I do not think that the Land Commission would be a competent tribunal to decide what was the value of the excluded portion, as for instance of building land in the case of Butterly *v.* Carroll. I think that if a man chooses to get the benefit of the Land Acts he ought to be content to take what is purely agricultural, and keep it at a reasonable rent.

Chairman.

10270. Have you any suggestion to make to the Committee about the disputed subject of town-parks?—Yes, I would like to speak of that. Town-parks have exercised my mind greatly, and there have been some decisions of mine on that question.

10271. We know all about them, and the leading cases; we shall only be glad to have your views upon them as they stand?—I am not going to refer to any of the leading cases. On this question of town-parks the Committee are quite familiar with what a town-park is, within the Act of 1881, and the three statutory conditions that are necessary; and they know that as the Act of 1881 stood, if the three statutory conditions existed, that is to say, if the holding was near a town, and bore additional value as accomodation land over and above its value for ordinary farming purposes, and was at the time of the passing of the Act of 1881 in the occupation of a person living in the town, it was a town-park, whether used for accommodation purposes or not. Then an amending Act was passed, the Act of 1887, the seventh section of which provided that although those three conditions existed, if it was found to have been let and used as an ordinary

Chairman—continued.

agricultural farm, the Land Commission might, so to speak, except it from the exception, that is to say, include it in the Act, within the benefits of the Act of 1881, if they were of an opinion that it would not interfere with the accommodation of the town or the development of the town. The construction that the Land Commission put upon that was that they thought that the words "ordinary agricultural farm" were used, in contradistinction to "accommodation land," and that if it was let and used for ordinary farm purposes it was within the Act. However, the Court of Appeal in the case of Macnamara *v.* Macnamara, reported in the 32nd Law Reports (Ireland), page 1, and in other cases since, have held that "agricultural" must receive the same construction that it received undoubtedly in the Act of 1881, and be treated as "tillage," so that the way in which it stands now is that if lands have been let which would otherwise be town-parks to a farmer living in the town, and are used by him as a dairy farm, they are outside the Act. But I would respectfully suggest that those cases ought to be included within the Act, that they are not town-parks at all.

10272. By including them you mean that you would not recommend the giving of a jurisdiction in all town-park cases?—No, and I will tell the Committee why. My ideas on the subject will no doubt be unpopular with a great number of people, but I do not see any reason for including town-parks generally within the purview of the Act, and my grounds for so thinking, whether right or wrong, are these: I must assume now that the Act has been amended so that every *bonâ fide* farmer, whether his farm is used for tillage or for pasture, though his farm would otherwise be a town-park, is taken within the Act; that is to say, that the word "agricultural" is removed, and it includes the case of any holding that is let or used for farming purposes. But now take the ordinary case of a town-park. These small holdings outside towns are held to a large extent by shopkeepers and others residing in the town, and no doubt they are a very great convenience to them; but at the same time these people who have these small holdings are not in any sense farmers; they do not make their livelihood by the land; one of the principal uses of these small town-parks is to graze their milch cows on. I do not think that the Land Commission, or any tribunal of the kind, ought to deal with anything except with purely agricultural holdings, or pasture holdings. For instance, some of these shopkeepers living in the town will have a small plot outside a town-park, for which they will pay a rent; others on the other hand will not hire land, so to speak, but will take grazing from some farmer, and they will send out their cows backwards and forwards to those lands, paying so much a head. I see no more reason in policy why the Legislature should interfere to fix the rent which the one man pays for his bit of land, than that it should interfere to fix the rent which the other man pays for his grazing. As I said, all these people admittedly, *ex concessis*, are not farmers. For instance, the keeper of the local hotel or public-house, the butcher, the local solicitor, the doctor, and so forth, all have their little plots outside,

Chairman—continued.

outside, and although no doubt it would be very beneficial for them to have their land cheap, I do not think it is the same kind of thing as making provision for the agricultural tenants of Ireland. That is my view; probably a great many persons will differ from me.

Mr. *Macartney.*

10273. In your suggestion to the Committee with regard to the next revision of rent, you stated that you had a preference for one valuer over two; would you explain what is your view?—The only reason is on account of the immense number of cases that will come in at the expiration of the first statutory term, and we have only a limited number of Sub-Commissioners; I think we have only 29 Sub-Commissioners, and I would much rather have a farm, as you may well conceive, valued by a good man than by two temporary Assistant Commissioners brought in for the purpose of re-fixing rents.

10274. That is your only reason?—That is my only reason. I would much rather have two men if we had the staff, and experienced men, such as we have at present, because one is always a check on the other.

10275. The reason why I asked you the question is, that we have had some evidence from Mr. Justice Shaw that he thinks it unsatisfactory to be supported by only one lay valuer, and that he thinks that the fact of only one valuer being attached to his court has prevented parties from coming to it?—There are special reasons, of course, in special cases. Some of the county court valuers are excellent men, but they are not of uniform standard; some are better than others. In the case of some of the county court valuers, I would just as soon have one man as two; but, of course, it is an advantage to have two. The Committee probably know that although in the reports that are given of the court valuers only one figure is fixed, we have the note-books of the court valuers, and very often they differ slightly, and then they adjust it by either splitting the difference or by one coming to the opinion of the other. There is a safety in having two.

10276. In dealing with improvements which have been made during the currency of the first 15 years' term, in your opinion is there sufficient registration of the improvements for which the tenants have received credit, or for which the landlord has received credit?—I am sorry to say that I do not think there is. In the earlier days of the Commission the information given on the schedules was very imperfect. I do not think there is always sufficient information.

10277. Could you suggest to the Committee any precautions which could be taken to prevent either party from taking advantage of that?—I could not, of course. My experience deals with the last three and a-half years, and we have improved our forms; that is to say, they had been improved just before my time, and we give much fuller information now than was given in years back. I cannot answer, and should not like to give any evidence to the Committee, except upon matters within my personal knowledge.

Mr. *Macartney*—continued.

10278. I am asking you whether you could make any suggestion?—I am greatly afraid that in cases of that kind it would be necessary to go into the question of improvements again. Of course there are certain classes of improvements, such as drainage works, that I take it could not be claimed twice over; I mean to say that if on the original fixing of the rent, drainage works had been executed, we will say, 18 years previously, and that they had become exhausted entirely before the re-fixing of the new rent, and fresh drainage works had been executed, I do not think that the tenant would be entitled to a double allowance for the two sets of drainage works, and therefore the evidence on that occasion might be confined to the last drainage works.

10279. Then I understand that if the parties do not agree to a conditional order by the Commission Court fixing the rent, you would leave them all the rights that they have now of going before the Sub-Commission?—Yes; in case either party were dissatisfied, I would have the case tried and disposed of before the Sub-Commission.

10280. With the full procedure of the Sub-Commission Court?—If we could simplify the procedure in any way that would be a good thing, but I do not think it is a question of procedure; it would be a question of evidence. I mean to say that the procedure in our court is a mere nothing; originating notice and so forth. I would have some simple form of notice in the first instance, and then if the parties were not satisfied with the rent conditionally fixed, I would send on that notice to the Sub-Commission without the necessity of a fresh notice: Notice would be given to the parties, the case listed, and let them produce their witnesses before the Sub-Commission and the case be tried just the same as before.

10281. That is to say, before the Sub-Commission court, and the two lay members would go on the farm?—Yes. I would have the Sub-Commission court constituted precisely in the same way as it is at present, that is to say two laymen and a legal Sub-Commissioner.

10282. With your experience, I understand that the strong inclination of your opinion is that if we adopted your suggestion a great proportion of the cases would be fixed out of court?—I think so. I think that both landlords and tenants would be very reasonable in their views in future, once having the fair rent fixed, and that the new improvements, so to speak, would be easily ascertained, and the allowance to be made in respect of them would practically be a thing that could not be disputed.

10283. Am I right in understanding that you are strongly of opinion that the appeal should be retained both on value and on law?—I think so; and for the reasons that I have stated. As I said yesterday, if it was practically possible to have the same tribunal for fixing rents all over Ireland, I do not think that there would be any necessity at all for an appeal, except in special cases; but owing to the inequalities that arise in fixing rents, it is desirable that the appeal should be continued. It is a most arduous duty,

Mr. *Macartney*—continued.

and I need hardly say that the Commissioners do not personally desire to retain it. It is arduous both mentally and physically, involving a great amount of travelling. I calculate that I have travelled upwards of 17,500 miles since I was appointed, and more than 5,000 miles last year. It is a very wearying thing, and not always the best thing for health.

Chairman.

10284. Members of Parliament travel a good deal in the course of their various duties, you know?—Certainly.

Mr. *Macartney.*

10285. Upon the question of sub-letting I understand that apart from the question of the labourers, and apart from the question of absolutely trivial sub-letting, you are not in favour of throwing open the whole question?—I am in favour, as I have already mentioned, if there are other sub-lettings, of letting those holdings be surrendered to the landlord, and treating those tenants as tenants direct to the head landlord. I have mentioned in reference to trivial sub-lettings that I think there is an injustice at present in excluding the exception of trivial sub-lettings as to trivial sub-lettings created after the Act of 1887, which has operated very harshly in some cases, and notably in the case that has been mentioned before the Committee, of Mr. Andrew Kennedy, a man well known in the North of Ireland, who had a number of little cottages sublet, but the sub-lettings of some of them were made after the passing of the Act of 1887, and they could not be treated as trivial.

Mr. *T. W. Russell.*

10286. That case was referred to here, and I shall have something to say about it?—Very well.

Mr. *Macartney.*

10287. Then I will not pursue it any further; I only wanted to take it generally. Now, on the question of specified value, I want to ask you whether you would think it desirable that specific rules or certain principles should be laid down and followed by the Sub-Commissions in assessing its value?—I think it would be very desirable if it could be done, and, if so, it ought to be done by legislation. I am not very much in favour, personally, of specified value. True value is quite a different question. I think there ought to be some conditions laid down by the Legislature as to what is true value. True value, I think, is not the full competitive value; but I think we ought to have something more than the mere expression of "true value," in order to indicate what is meant by the Act. I can state to the Committee afterwards why I think that true value is not the competitive value.

10288. Could you state that now?—I think that true value is not competitive value for this reason. Lord Justice FitzGibbon has referred to what has been called the Lincoln's Inn rule, that is to say, that if the same expression is met

Mr. *Macartney*—continued.

with in the same or kindred Acts it receives the same or a similar interpretation, and, on the other hand, if you get different expressions used in the same or kindred Acts, you must take it for granted that the Legislature was referring to something different. Now we have the expression "true value" used in the first section of the Act of 1881, and in the fourth section of the same Act we have the expression used of the "selling value." Section 4, Sub-section 2, "Where the tenant of any future tenancy does not accept such increase and sells his tenancy, the same shall be sold subject to the increased rent, and in addition to the price paid for the tenancy he shall be entitled to receive from his landlord the amount, if any, by which the court may, on the application of the landlord or tenant, decide the "selling value" of his tenancy to have been depreciated below the amount which would have been such selling value if the rent had been a fair rent"; that is one reason. Then in an Act of kindred character—in *pari materiâ*, passed the next year, the Arrears Act, 1882, you will find the expression used of the "saleable value" of the tenancy. That seems to me to show that by the use of "saleable value" in the Act of 1882 and "selling value" in the Act of 1881, "true value" must have been something different; that it was not the competitive selling value or saleable value, whether or not it was what would be a fair value to be paid under the circumstances. The view that the Land Commission have taken, in my time at any rate, is certainly not to restrict it merely to the value of the tenants' improvements. There is an expression used in one of Mr. Justice O'Hagan's decisions that seems to imply that he thought that the value of the improvements constituted the true value; I do not think so. I think, for reasons that I have mentioned already, that the tenant has a substantial occupation interest over and above his improvements, and that that ought to be taken into consideration, and I have so acted upon it. I might also mention, in reference to the grievance of the tenant having to get a lesser sum from his landlord than the full value that he would get if he sold in the open market, that it is to be observed that it was the same Act that imposed this condition upon him, which really gave any selling value to his holding at all, by applying to tenancies from year to year. The selling value was very much less before the Act of 1881, and it is not so great a hardship to curtail a man's rights when you give him the rights by the same Act, as it is to diminish them if he has been already in enjoyment of them.

10289. Could you give the name of the case to which you refer?—I have not referred to any case. I say on general principles, that in estimating true value we take into consideration something more than the mere value of the improvements, and in substance what we fix as true value is the amount which we think that a solvent purchaser as a tenant would give for the holding, paying the rent, and making neverless a profit out of the holding, and getting a fair interest for his capital, not necessarily a large interest, but some interest on his capital.

10290. Is

Mr. *Carson.*

10290. Is there any case in which you have laid down that principle?—We have stated it, but there is no reported case. It was laid down by one of the legal Sub-Commissioners, but that was after similar decisions of ours; there was a reported case of Mr. Trench.

Mr. *Macartney.*

10291. I want to ask you on the status of a future tenant. In your opinion is that in a doubtful condition at the present moment, as to what he is liable for, and what conditions he will occupy under?—A future tenant, that is to say, a tenant created after the passing of the Act, or created in 1882, in a holding on which no tenant existed at the passing of the Act is in this position; he has his right, of course, to compensation for disturbance, and to compensation for improvements, but he has no right to fix a fair rent. But under the 4th section of the Act, if the landlord demands from him an increase of rent, then his tenancy becomes subject to a statutory term just in the same way as another tenancy; but so far as I can see in the Act, that statutory term is not renewable unless at the end of that statutory term he submitted to a fresh increase of rent. I do not think that there is any means of fixing a second statutory term in that case.

Mr. *Sexton.*

10292. At the end of the first statutory term he is liable to eviction as if the Act of 1881 had never been passed?—At the end of the first statutory term he would be liable to eviction unless he submitted to a fresh increase of rent. That is my idea.

10293. Supposing that the landlord, instead of asking for a fresh increase of rent, preferred to evict the tenant, he might do it?—There would be nothing to prevent eviction. A future tenant is decidedly in a very much worse position than a present tenant. The tenants who are in existence at the time of the passing of the Land Act of 1881, are in a very much more favourable position than those whose tenancies were created afterwards.

10294. I see in your memorandum that you express regret that the 4th section of the Act does not provide any means of recording Land Commission cases in which rents have been fixed under those provisions with regard to future tenants?—I think that is to be regretted. Sometimes cases come before us to fix a fair rent, and it turns out on the evidence that the tenant was a present tenant at the passing of the Act of 1881, but that in the course of the following year or so an application to pay a higher rent was made by the landlord, and the tenant assented to it, whether in ignorance of the provisions of the 4th section or not I do not know, very possibly in ignorance; and the effect of that was to fix the rent as a fair rent for a statutory period of 15 years. There is no record of that, and nothing to show when that 15 years commenced, or when it will expire; and I think it is very important if that could be remedied in some way. The Committee will understand that these notes of mine are not in any way a treatise on the Land Acts, and also, as Mr. Morley knows, that they were prepared before the Committee commenced its sittings, and there are other matters which I would otherwise have referred to which might have been of some assistance.

Mr. *Sexton*—continued.

10295. With regard to sub-division, I ought to have taken this before; do you think it is desirable that any alteration should be made with regard to the conditions laid down about sub-division?—No, I think not. As a general rule, I do not think that sub-division ought to be encouraged. Trifling sub-lettings are quite a different thing; but I do not personally approve of sub division, or divisions between members of a family; I think it is an injurious thing without capital enough to work them.

10296. Going back to a question on which you gave some evidence earlier this morning, we have been told by, I think, all the lay Commissioners who have appeared here, certainly by Mr. Doyle and Mr. Greer, two of the leading Sub-Commissioners, that they have never received any instructions from the Chief of the Commission with regard to the manner in which they should carry out their duties?—Certainly not; they never have.

10297. And Mr. Doyle and Mr. Greer have told us that they never gave any instructions to their lay colleagues as to the manner in which they should assess the rent upon a farm or value a farm. The point which I want to arrive at is this: that whatever may have been the opinion that Mr. Doyle expressed here lately upon some points put to him by the Committee, that opinion has not influenced his lay colleagues in arriving at the fair rent of a holding?—I know nothing of what Mr. Doyle has said; I can only speak as to myself. I cannot express any opinion on Mr. Doyle's evidence.

10298. What I want to make quite clear is, that that would account for the fact that no appeal has come before you founded on any such discrepancy as has been suggested to you?—In no appeal from Mr. Doyle's Commission has any question been raised as to whether the occupation interest, if I may so call it, of the tenant, was or was not taken into consideration. No such question has been raised, either from Mr. Doyle's Commission or from any Commission.

10299. And that would be easily accounted for by the fact that the lay Commissioners have been left entirely to themselves in the matter?—The Sub-Commissioners are given complete jurisdiction over the case; the legal Commissioner has complete authority to decide all questions of law that arise before him, subject to appeal.

Mr. *T. W. Russell.*

10300. You have not been asked any questions about the Rent Redemption Act?—No.

10301. I wish to take you on to that point first. A question has arisen under that Act, I believe, of fines?—Yes.

10302. Will you explain to the Committee what that question was, and how you have dealt with it?—That was the case of Mollan *v.* Keiran.

Mr. *T. W. Russell*—continued.

Keiran. My decision in Mollan *v.* Keiran, as probably you are aware, is reported, and I am afraid that if I were to give my reasons for that decision I could not give them much more concisely than they are stated in the judgment in the report. I could give a general view, if you wish to hear it.

10303. The only question that I wish to know about is the question of fines. In Mollan *v.* Keiran a large fine was paid?—Yes.

10304. For the lease being granted; is not that so?—Yes.

10305. And you ruled that in fixing the rent no consideration should be paid to that fine?—I was of opinion that we could not give any consideration to it. I have stated in my judgment the reasons for that opinion. It is not to be supposed that I laid down that under all circumstances fines paid by tenants to landlords cannot be taken into consideration; but where a fine has been paid either for security of tenure, or to reduce the rent, in my opinion, and for the reasons which I have stated in the printed judgment here, I do not think that that can be taken into consideration; I could tell you why in a few minutes if you wish to hear it.

Mr. *Carson.*

10306. Where is it reported?—In the Reports for 1894; they are called [1894] Law Reports (Ireland), page 27.

Mr. *W. Kenny.*

10307. What month?—January. At the same time I guarded myself by saying that if the fine was given as an "input" as it is called, or if the fine could be shown to be given for previous improvements which the landlord had either made or acquired, in either of those cases it should not be taken into consideration.

Mr. *T. W. Russell.*

10308. Did you consider the fine paid in Keiran's case or in Gault's case in Antrim, which I daresay you remember, as being a fine for a reduction of rent?—I took it to be a fine paid to acquire a fee-farm grant, to acquire security of tenure; and I came to a very clear conclusion on that, that it could not possibly be allowed.

10309. Assuming as I do, personally, that the Rent Redemption Act was passed in order to place those long leaseholders and the holders of fee-farm grants in the same position as ordinary leaseholders that have been admitted under the Act of 1887, is it the fact that the Rent Redemption Act fails to do that?—In my opinion it has not done so, and in my opinion it is the fault of the Legislature. In my opinion the Legislature did not take into consideration that a fee-farm grant was outside the Land Act of 1870, and that the grantee under a fee-farm grant has no interest in his improvements at all, different from the interest that he has in the land. The result of that is, that as the law now stands, quite irrespective of the Rent Redemption Act, if a grantee under a fee-farm grant should be evicted for non-payment of rent, he cannot claim compensation for any improvements, no matter how valuable or substantial they may be, and inasmuch as Adams *v.* Dunseath has put the exemption from rent on improvements on the basis of a claim for compensation for improvements under the Act of 1870, I consider that I was bound to hold in that case (reluctantly) that it was outside the Act; but that is through the fault of the Legislature.

10310. That is to say, that the statute did not carry out the intentions of the Legislature?—We who interpret the laws can know of no intention except that expressed in the Statute. You, sir, can know of the intentions outside the four corners of an Act of Parliament, but we can only go to the Act; any other construction would, in my opinion, have been going outside the Act.

10311. I am not quarrelling with the construction, but you referred to the fault of the Legislature, as I understood, in not carrying out what you conceive to be the intention of the Legislature?—Yes; and in that case I even stated in my judgment that it was to be regretted that the Legislature did not put grantees under fee-farm grants in the same position as long leaseholders. It is right to say in reference to this case that a similar question has been raised in Mairs *v.* Lecky, and that is going to the Court of Appeal. I was anxious in the first case that came before me that the parties should go to the Court of Appeal, and they got liberty to state a case, and in several other cases they had leave to have a case stated, but they did not proceed.

10312 Mairs *v.* Lecky was the case that has been referred to here as the case of a Presbyterian minister?—Yes, it is the case of a Presbyterian minister who built a manse, and we considered, for precisely the same reasons as in Mollan *v.* Keiran, that we were obliged to exclude it. A second question was raised in Mairs *v.* Lecky as to whether the Ulster tenant-right custom might make some difference, but for the same reason the Ulster tenant-right custom is legalised by the Act of 1870 only in reference to tenancies from year to year, and leaseholders, and not in reference to fee-farm grants; and therefore I considered that it was excluded.

10313. A certain class of fee-farm grants have also been excluded by the decision of the Court of Appeal in Kelly *v.* Rattey?—On a decision of my own, I am responsible for it, because my colleague Mr. FitzGerald differed from me on the subject; but nevertheless I came to the conclusion, and that conclusion was confirmed by the Court of Appeal, that all these Acts only applied to cases in which the relation between landlord and tenant existed, and that if the relation between landlord and tenant did not exist, although the parties, in the form of the instrument, may have thought that they created the relation, the case is outside the Act.

10314. If the holder of a fee-farm grant avails himself of the Act of 1891, which was passed in order that he should get a fair rent fixed, is not the net result, whether he buys or whether he has the rent fixed, that the purchase money is calculated upon the land as it stands, with all the tenant's improvements, and that when the rent is fixed that is also done?—Yes, but under the Rent

Mr. *T. W. Russell*—continued.

Rent Redemption Act, when he redeems, I think it is a misconception to suppose that he in any way purchases his own improvements, it has been sometimes put in that way.

10315. Yes?—I think not, for this reason: that the improvements are necessarily taken into consideration as being something giving security to the rent. I will illustrate it in this way: supposing that here in London a man lets a piece of building land at a certain rent, say 20*l.* a year, and that a valuable house is built upon that land, the rent in point of law issues both out of the land and out of the house; undoubtedly if that rent is put up for auction in auction rooms, it would fetch a higher price in consequence of the valuable buildings being on the land; but it would be an utter mistake to say that if the tenant went into the auction rooms and bought the rent, he was buying his own improvements, he was merely doing this, he was buying the rent which was rendered more valuable by his improvements. What you have in your mind is this: that if he was a leaseholder the rent would not be considered as valuable, and for the reason that I have already explained, that if he were a leaseholder he would have a right of compensation for improvements, and therefore the rent is not as well secured in that case as it is in the case of a fee-farm grant, where, in consequence of the grant, as a fee-farm grant, not being within the Act of 1870, he has no such right of compensation.

10316. We have been told by your Sub-Commissioners that when they go upon a farm under the Rent Redemption Act, 1891, what they do is this: they take it as it stands, simply as a going concern, with everything upon it, and if a fair rent is to be fixed they assess the rent upon the thing as it stands, as a going concern; is that correct?—That is to say, that they take it as it stands in the hands of the tenant, and fix the rent on it; and then in leasehold cases from the rent so fixed they take off whatever deductions are necessary in reference to improvements and so forth. But then you will understand what I have already said, that in the starting-point, in fixing the rent on the tenancy as it stands, they take into consideration this occupation interest; some of them do undoubtedly; they say they do.

10317. I am assuming that a long leaseholder, or the holder of a fee-farm grant, had come into court under the Act of 1891, to get the rent fixed. The evidence that we have had from the Sub-Commissioners is to that effect?—I take it that they fix it just as it stands.

10318. I am now speaking solely of the Rent Redemption Act, and fee-farm grantees. The Sub-Commissioners fix the rent for the farm as it stands, and the tenant is assessed on all his improvements?—I think, if I may be allowed to say so, that that is regretable; I will not use a stronger expression.

Mr. *Carson.*

10319. Why should it be regretable; the landlords do not regret it?—I think that a fee-farm grantee should be put upon the same footing as a long leaseholder, and that he should be allowed some exemption from rent in respect of reclamation of waste land, and permanent buildings.

10320. Is not that a matter for the Legislature rather than the Bench?—Yes, it is a matter for the Legislature. I do not understand that Mr. Russell quarrels with that. The Land Commission have no power over that.

Mr. *T. W. Russell.*

10321. I do not quarrel with that at all; I only want to elicit the facts?—I want to explain what the actual state of facts is. According to the view that I take, whether it is right or wrong, that is unfortunately the state of the law.

10322. And it is also the state of the law that all fee-farm grants made before 1860 are excluded under the decision of Kelly *v.* Rattey?—No; that is far too general, and for this reason, that there are a very large class of fee-farm grants made under the provisions of the Renewable Leasehold Conversion Act. All those that have been made before 1860, which are the great majority of fee-farm grants, are in just the same position as any made subsequently; also, as I had occasion to point out in my judgment in Kelly *v.* Rattey, under legislation peculiar to Ireland, under special Statutes, and various grants from the Crown, there were a number of persons authorised to make fee-farm grants in Ireland, creating the relation of landlord and tenant; there are a number of those grants still in existence. In England, since the passing of the Act *quia Emptores*, no such grant could be made; and in England, if you find a fee-farm grant, properly so-called, in which the relation of landlord and tenant exists, it must have been made before that Act. But there are a number of fee-farm grants, such as Mr. Russell has in his mind, in which before the year 1860 persons who were owners in fee made grants in fee, not under any Statute and not under any grant from the Crown; in those cases the relation of landlord and tenant was not created, and those persons are outside the Act.

10323. They are not a large number, I believe?—That I do not know; they are not a very large number I should say. But I should like to mention also that if there was to be any remedial legislation in that respect, there are other persons who are similarly circumstanced, and who I think are equally deserving of consideration. If before the Act of 1860 a leaseholder for a term of years, say 50 years, made a lease for his own term, reserving a rent, in law that operated as an assignment, and although that purported to create the relation of landlord and tenant, the man was not a tenant, although rent has been paid from that day down to the present. And I think that if the fee-farm grantee is to be brought in, the man who is practically a tenant, although legally not a tenant, has just the same right, and I suggest that if any alteration of the law is made, it should extend to that case as well.

10324. Coming to the question of sub-letting, and leaving aside the provisions of the Act of 1881, and the Act of 1887, I want to put this question

Mr. *T. W. Russell*—continued.

question to you. Assuming the case of a landlord and tenant who have not come under any of the Acts, who have never entered into the Land Court at all, assuming that the tenant has sub-let and that the landlord has taken rent from that tenant for many years without objecting to the sub-letting, assuming that the tenant takes it into his head to have a fair rent fixed, and comes into court; assuming then that the landlord wakes up for the first time to the iniquity of the sub-letting, and bars his way; what do you say to a state of affairs like that?—What I say in reference to that is, that as the law now stands, as settled by the Court of Appeal, that alone would not be evidence of any active consent on the part of the landlord to the sub-letting, and the tenant would be out. But you must recollect that if you put the tenant in in that case you would put the tenant in in this case. Supposing that there is a tenant of 100 acres, and that he sub-lets to A., and the landlord does not object, and sub-lets to B. and C., and sub-lets nearly the whole, the landlord making no objection, and retains two acres in his own hand; if in the one case you let in the one man apparently you would have to let in that man who has reduced himself merely to the state of a middleman.

10325. I am dealing with the point that sub-letting might damnify the landlord, and I want to put to you the fact that the landlord has acquiesced (I think that is the best word) in this sub-letting for a long series of years, and has taken the rent from the tenant partly earned by this sub-letting, do you think that he ought to be entitled to come into court when the tenant seeks a fair rent?—As the law now stands he could not fix the fair rent. The case of Wakefield *v.* Robinson in the North of Ireland is a case in point, in which a Sub-Commission dismissed the tenant on that ground. In that case it appeared on the evidence before us that as to certain of the sub-tenancies, after the sub-tenancies had been created for some time, there was an assignment of the holding, and as there was a restraint on assignment in the lease, the landlord was a party to the assignment, and so far as those tenancies were concerned the Court of Appeal held that the landlord could raise no objection. But there were other tenancies that were created afterwards, and the evidence given before us showed that some time afterwards the landlord came upon the land and spoke to the sub-tenants; he asked them what their rents were, and he expressed the opinion to some of them that they would be better off if they were under him than under the tenant. Under those circumstances we held that that was equivalent to active consent to the sub-letting, and we reversed the decision of the Sub-Commission, and sent it back to them to fix the fair rent. But an appeal was taken from our Order to the Court of Appeal, and we were reversed again, on the ground that it did not amount to anything like active consent.

Mr. *T. W. Russell*—continued.

10326. On the question of triviality in sub-letting, that must be a mere matter of discretion on the part of the Commissioners?—It is.

10327. We have had some evidence from Lord Justice FitzGibbon on that point. A case decided recently was Corballis *v.* Ward?—Yes, I have a note on trivial sub-lettings that I thought I would mention.

Friday, 20th July 1894.

MEMBERS PRESENT:

Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
The Solicitor General.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. Justice BEWLEY, re-called; and further Examined.

Mr. *T. W. Russell.*

10328. WE were on the question of triviality; would I be correct in saying that the decision which has governed the Land Commission on the question of triviality has been that of Kennedy *v.* Essex?—That was the leading case up to recently. Kennedy *v.* Essex was the first case on the subject that went to the Court of Appeal, and that was the case I acted on until recently. The two recent cases were White *v.* White, and Ward *v.* The Trustee of Corballis.

10329. Practically these two cases have been decided by the Court of Appeal during the present year?—Yes.

10330. Therefore, whatever the decisions may have been, they could not have influenced the Land Commission during the period from 1887 until the beginning of 1894?—That is so.

10331. And your judgments were entirely influenced by the case of Kennedy *v.* Essex as to triviality?—And my own independent opinion of the construction of the Act, which has, I admit, been modified by these recent decisions.

10332. Now, as regards Kennedy *v.* Essex, I believe that the Court of Appeal decided that 6 per cent. of the rent was not trivial?—It was noticed by Lord Ashbourne in his judgment, that a sub-letting which amounted to a rental of 6 per cent. on the entire rental was not trivial. The entire rental in that case was 300*l.* 13*s.* a year; the acreage was 177 acres 3 roods 2 perches; the small houses that were sub-let, six in number, yielded a rental of 18*l.* 2*s.* 5*d.*, and that was considered as not trivial.

10333. This is a case of some importance on the question of sub-letting, and I wish to have the details clear. I believe it was proved that there were five houses on the farm, two or three of which were there at the making of the lease in 1875, and were a continuation of a street in the town of Trim?—Yes, that is so.

10334. A man named Hussey had been holding two acres of land, in addition to that?—That is so.

Mr. *T. W. Russell*—continued.

10335. And that was a separate sub-letting?—Yes; that was an entirely agricultural sub-letting, so to speak.

10336. At the hearing did the tenant give evidence that the former agent of the Earl of Essex had written to him consenting to the erection of the houses, and that the former and the present agent knew of the houses being sub-let?—I think the evidence is correctly stated in the Report. I cannot take upon myself to charge my memory with the evidence that was given on the occasion. The case is reported, as you are aware, in 28 Law Reports, Ireland, at page 586.

10337. At all events, the Court of Appeal held that the acquiescence of the landlord, or whatever it was, was not sufficient consent?—Yes.

10338. And they also held that 6 per cent. of the rental was not trivial?—Yes; (and, further in that case, as I would like to mention, because it influenced my judgment in subsequent cases), there were statements in the judgments of three of the judges which seemed to imply that the sub-letting to Hussey alone of two acres was not moral.

10339. I am coming to that?—That that alone would not have been trivial.

10340. I have it here that Lord Justice Barry said that he had great difficulty in holding that the landlord had not consented to the sub-letting of the houses?—Yes.

10341. But he concurred in dismissing the application, chiefly on the sub-letting of the two acres to Hussey?—Yes.

10342. Of course I am not a lawyer, but would I be right in saying that the Court of Appeal held that the sub-letting of two acres to Hussey was not trivial?—I took it from their judgments that a sub-letting of two acres, even out of so large an acreage as 177 acres 3 roods 2 perches, was not trivial, and I acted on that; but it is right to say that Lord Justice Barry, in his latest judgment in the case of Ward *v.* The

Mr. *T. W. Russell*—continued.

Trustee of Corballis, said that each case must be decided on its own merits, and that in this particular case of Kennedy *v.* Essex, the fact that the tenant Kennedy thought it necessary to get up the lands from Hussey immediately before the hearing before the County Court judge showed that he did not consider it a trivial sub-letting.

10343. The getting up at that time was not sufficient to influence his status as a tenant?—I should say not. In that case also Lord Justice FitzGibbon, at page 592, after dealing with the lettings of the houses, thus proceeded: "Another point has been raised. It appears that a man named Hussey was in occupation of two acres of the holding for upwards of 13 years at a rent of 8*l.* per annum, and that the tenant got up possession from Hussey after service of the originating notice, and only one week before the case was heard by the County Court judge. This sub-letting was fatal to the status of the tenant at the date when he served his originating notice," unless it was made with the consent of the landlord.

10344. May I take it that the result of Kennedy *v.* Essex was this: that first of all the Court held that 6 per cent. of the rental was not trivial, and that, apart from that question altogether, the sub-letting of the two acres to Hussey was not trivial either?—That is carrying it a little too far; the expression as to the 6 per cent. is merely an expression of Lord Ashbourne's in his judgment, and you cannot make use of the statement of one judge as necessarily expressing the opinions of his fellow-judges; but at any rate, Lord Ashbourne, who was the head of the Court, did consider that 6 per cent. in that case was not trivial, but in the case of Robinson *v.* Wakefield, with which you are familiar, he said, referring to his own statement in Kennedy *v.* Essex, there referred to, "That was no hard and fast line, and what might be trivial in one case was not necessarily trivial in another."

10345. Leaving the question of sub-letting, I should like to ask one or two questions on demesne lands; I believe that the old law in regard to demesne lands was that covered by the case of Hill *v.* Antrim?—Yes, that was the case on the subject before the then Mr. Justice FitzGerald.

10346. That was decided before the passing of the Act of 1881?—It was decided under the Act of 1870.

10347. Therefore that was the state of the law when the Act of 1881 was passed?—Yes.

10348. And upon which it was passed?—That was the view then taken.

10349. Did Lord FitzGerald hold then that, if demesne lands were let on long lease, they were undemesned?—He seemed to say, if they were let on an agricultural lease (he uses that expression) for a long term, that they would lose the character of demesne.

10350. Therefore, if Lord FitzGerald's law had stood, demesne land let on a fee-farm grant for agricultural purposes would of course come under the Act?—That was the view I took in Spencer *v.* Tedcastle; and on that ground I considered that the lands could not be treated as demesne.

10351. Lord Justice FitzGibbon gave us a few sentences of Spencer *v.* Tedcastle, to which I wish to call attention; at Question 3505, I said to Lord FitzGibbon, "You have not referred to Spencer *v.* Tedcastle. As I understand, it went this length, that demesne land let for a period of 999 years was not undemesned by that." Lord Justice FitzGibbon said, "No, Spencer *v.* Tedcastle went on the same principle as was reduced to a very much lower point by the case of Pratt *v.* Gormanston. The land was let on a fee-farm rent, and it was the grantee who made it a demesne, and what Spencer *v.* Tedcastle decided was that a grantee for ever might make land demesne." That was the first answer Lord Justice FitzGibbon gave to me. Then this is the revised answer, "The land was let on a fee-farm rent, and the grantee used it as demesne." In the first evidence he said he made it into demesne?—I think the Lord Justice's recollection of the case was imperfect at the time he made that statement, because in Spencer *v.* Tedcastle undoubtedly the lands were demesne lands at the time the fee-farm grant was made. The lands were held under a lease for lives renewable for ever, afterwards converted into a fee-farm grant, but it is right to say that the land continued to be used for what are popularly called demesne lands, that is, lands attached to a mansion house that form a portion of what would be called the park in England, and demesne in our country.

10352. In the hands of the holder of the fee-farm grant?—Before the date of the fee-farm grant they were already demesne lands, but whatever their character physically was, I was of opinion that as between landlord and tenant, the question of demesne could not be raised when they had been granted for such an intent; and the view I entertained seems to be the view entertained by the Lord Chief Baron, in Magnar *v.* Hawkes, that the reason of the introduction of this exception to the Acts of 1870 and 1881 was that demesne lands were only let for some temporary purposes; they were, in fact, lands within the ambit of the park or demesne, and any letting of them was not likely to be a permanent letting, and that the landlord should be in such a position, under the Act of 1881, that he could get back these lands into his own hands.

10353. That is what you held?—Yes.

10354. Would the Court of Appeal Judgment be correctly summarised in this way: that the mere fact of demesne lands being granted by fee-farm grant, or demised by lease for a very long time, so long as to negative any intention of resumption at some future time by the landlord, is not sufficient to deprive them of their character as demesne lands?—That is so, and the more recent decisions seem to me to go on this ground, that instead of regarding the exception as being introduced in order to enable the original landlord to get back his lands, it is an exception of lands of a particular character, park-like lands, demesne-like lands, and no matter what the tenure is, if they are lands of that physical character, they could not be lands upon which a fair rent could be fixed, and, of course, that is the view that now obtains in the Land Commission.

10355. I only want to get out the facts as regards

Mr. *T. W. Russell*—continued.

regards the decision; now come to the question of town-parks; has not the law as regards town-parks been very much narrowed as against the tenant by recent decisions?—I think so.

10356. Was not the law in 1881 that the population was the determining test of what was a town?—Previous cases seem to show that population was the chief test.

10357. Did not Judge Lawson under the Act of 1870, which had the same definition of town-parks as the Act of 1881, hold that Newmarket, County Cork, with a population of 765, was not considerable enough to be a town?—He did.

10358. I believe there is no definition of what is a town in any of the Acts?—There is not.

10359. Do you recollect that Judge Lawson, commenting upon that, stated that, inasmuch as he found no definition of a town within the Acts, he had to go to the Towns Improvement Act to find what a town was?—I do not recollect, but I know that he considered that population was the main factor, so to speak, in determining whether a place was a town, or whether it was merely a village.

10360. Now in Killeen *v.* Lambert was not population also relied upon by the Court of Appeal; that is reported in Cherry at page 331?—Yes.

10361. That being the old law, when was the case of Caledon *v.* Archer tried?—I may say that Caledon *v.* Archer arose, as well as I recollect, some time last year; I should like to mention that I was not at all disposed to narrow in any way the law as laid down by Mr. Justice Lawson, and accordingly I held that Ballyjamesduff, in the County of Cavan, with a population of 731; Dundrum, of which the Committee has heard a good deal, which had only a population of 372 in 1881, and Caledon, which had a population then of only 562; were not considerable enough to be dealt with as towns, but in the case of Caledon *v.* Archer, the case went to the Court of Appeal, and the Committee know what the result was.

10362. The fact I wish to elicit is this: That commencing with Mr. Justice Lawson's decision under the old Acts, the law has been considerably narrowed from the tenants' standpoint by the decision of Caledon *v.* Archer?—I think so. I think a great many more holdings would be treated now as town parks, and I, of course, look upon the decision of the Court of Appeal as of the same effect as a Statute, and I, of course, follow it as long as the law remains in its present position.

10363. You have mentioned the town of Dundrum: would I be right in saying that the Court of Appeal in deciding the Dundrum case carefully abstained from giving the Land Commission any guidance as to what a town was?—I would not go so far as that, because I would say that Lord Justice Barry, who had not been a party to the original decision in Caledon *v.* Archer, gave his opinion on what a town would be in law, and he referred to some cases which were decided under the Railways Acts, and amongst others to a case of Elliott *v.* the South Devon Railway Company, reported in 2 Exchequer, page 725, and there he said the Barons of the Exchequer seem to have been in the main of opinion that by a town

Mr. *T. W. Russell*—continued.

within the meaning of those Acts the place must be an inhabited place where the occupation is continuous, but they were unanimous that it was a jury question. He says there is one observation to be made on the judgments, which is that population is never once referred to by any of the judges as a test. Then he refers to another case of The Queen *v.* Cottle.

Mr. *Sexton.*

10364. They must not live in tents or movable residences?—He says the population was not referred to by any of the judges as a test to apply. If you had an inhabited spot where the occupation was continuous, no matter how small that might be, it was a town for the purpose of these Acts.

10365. It would not apply to gipsies or nomadic tribes?—Then he refers to the case of The Queen *v.* Cottle, in 16 Queen's Bench, page 412, where the meaning of the word "town" in a local and personal Act was discussed in a criminal case. The judge at the trial left the question to the jury, telling them the word "town" in the Act was to be understood in the popular sense, that a town was generally a collection of houses, and they were to say whether the spot was surrounded by houses so reasonably near that the inhabitants might be said fairly to dwell together. The jury brought in a verdict for the Crown; a new trial was sought on the ground of misdirection, and the case was argued in the Queen's Bench. In giving the judgment, Lord Campbell, Chief Justice of the Queen's Bench, says: "We think there was no misdirection in this case. The learned judge with much felicity comprised in a few words all that was material in the language of the Barons of the Exchequer as to the definition of a 'town' in Elliott *v.* South Devon Railway Company." Therefore, Lord Justice Barry goes on to say he approves the decision in Caledon *v.* Archer.

Mr. *T. W. Russell.*

10366. Would I be absolutely accurate in saying that the Court of Appeal decided the case of McCann *v.* Downshire on the ground, not that Dundrum was or was not a town, but that no demand for accommodation land had been proved in the case?—The sole ground of decision was *deficit probatio.* As one of the judges said, the evidence of Mr. Howe on the subject was too general, and merely said this did bear additional value as accommodation land, but he did not give any particulars to arrive at the value at which lands were let for ordinary farming purposes; and it is simply a decision in that particular case, that there was not enough evidence. That leaves the question as to whether Dundrum is to be considered a town or not open for the future. If in a future case particular evidence is given to show that the land in the neighbourhood of Dundrum does bear additional value as accommodation land over and above its ordinary farming value, then Dundrum in my opinion must be treated as a town for the purpose of the Act.

10367. And the question of Dundrum having

Mr. *T. W. Russell*—continued.

been decided two or three different ways already, it is now an open question whether it was or was not a town after the 22nd August 1891?—Apparently so. The Sub-Commissioners decided that it was a town. I reversed that, and decided it was not a town, and that decision was acquiesced in. Then this more recent Dundrum case came, and I considered myself bound to follow Caledon *v.* Archer, but the Court of Appeal thought the evidence which was given of accommodation value was not sufficient, and in that respect my decision was erroneous.

10368. First it was not a town on the 21st of August 1881, then it was, and now it is not?—I can only say what in those particular cases was my decision. What Mr. Russell asked me was that the recent decision of the Court of Appeal is a decision that does not decide the question one way or the other, whether Dundrum is a town or not.

10369. After all, tenant farmers are not very rich litigants. Do you not think it is of more importance that there should be a decision as to what a town is?—No Court will decide a question that is unnecessary for its decision. When it is sufficient to decide a case on one point, it is unnecessary to express an opinion on the other point; but I take it the judgment of Lord Justice Barry in that last case would rather tend to show that Dundrum would have been a town if evidence could have been given as to the existence of accommodation value.

10370. Then, may I take it that the view of the Land Commission on the town-park question at the present moment is expressed in the judgment on Fivemiletown, in the following words: "The Court of Appeal appear to have laid down in Caledon *v.* Archer that if there was an assemblage of houses of such a character that there was a demand for accommodation land by the inhabitants, whether the place be, strictly speaking, a town, a village, or a hamlet, it was to be considered a town for the purposes of the Act"?—That is an unrevised copy, of course, of my judgment. In reference to hamlet the expression I used was, "or the reasoning would almost go to show a hamlet," because, as I pointed out in my judgment, which is now being reported fully in the case of McCann *v.* Downshire, it would be a mistake to suppose that it requires a large number of houses in order to create a demand for accommodation land. That is the case in which I put the case that four houses at cross roads might create a demand for accommodation land; but I said it was surely never the intention, and I do not think it was the intention of the Court of Appeal, to say that these four houses would constitute a town, and the Court of Appeal say so in their most recent judgment. They say, no, it must have the characteristics of a town.

10371. I venture to use this report, because it is a report by a gentleman whom you described as the official shorthand writer of the Court?—I know he is the official shorthand writer, but in the particular case our official shorthand writer sent me that for revision, and I revised it in the way I have mentioned. It is a mere verbal alteration to say that the reasoning seemed to apply to a hamlet as well as a town.

Mr. *T. W. Russell*—continued.

10372. We may take it, at all events, that the position of the law with regard to town-parks has not been really affected by the decision of the Court of Appeal in the Dundrum case, and that Caledon *v.* Archer really stands as the law?—I think that is so. I certainly should feel bound to follow Caledon *v.* Archer, and I followed it in the Fivemiletown case. In the Fivemiletown case there was ample evidence given of the existence of accommodation value over and above the ordinary farming value.

10373. As regards pasture holdings, you are aware, of course, that the system of agriculture in Ireland has been subject to a great change since the Act of 1881 passed?—That is so.

10374. I mean that tillage is going out?—Labour is getting dearer.

10375. That is not the point; the point I want to get out is that the character of the agriculture has changed; tillage is going out to a large extent, and pasture is increasing?—That has been going on for a great many years. It commenced before 1881, but it has been going on steadily.

10376. Would I be right in saying that the grounds upon which Parliament in 1881 excluded pasture holdings, to a large extent, do not exist to the same extent now, owing to that change?—That is a matter of policy, and people apparently are divided as to the grounds upon which pasture holdings were originally excluded. The best exposition one can find of the grounds is in the judgment of Lord FitzGerald in Westropp *v.* Elligott, in 9 App. Ca. in the House of Lords, in which he says that probably the original exception was introduced into the Act of 1870, where the language is almost identical, because graziers were not an improving class of farmers, and that, as a rule, they were migratory in their habits; they took large tracts of land here and there, and they made no improvements on the land; and probably that was one of the reasons they were excluded.

10377. Assuming that it is quite right to exclude large graziers who live in Dublin, and who take tracts of land and move about in the way you very accurately describe, is there any reason why many pasture holdings that are not in the hands of graziers over 50*l.* valuation should be excluded from the Acts now?—I think that is rather a question of policy which I ask not to express any opinion upon. I mean to say my opinion is not worth more than the opinion of anybody else on the subject. I will state this, if you will allow me, that most certainly I think that dairy farms should not be excluded, and as Lord FitzGerald points out in this case in the House of Lords, Westropp *v.* Elligott, there is at least a considerable doubt as to whether, although the Legislature may have originally intended only to keep out graziers properly so called, that is, men who take grass land to fatten cattle for sale, the sub-section might not also exclude dairy farms. As a matter of fact, in my experience of the Land Commission, we never have excluded a dairy farm, and it is right to say that I do not remember, except probably in one or two cases, any landlord trying to exclude a dairy farm.

10378. And

Mr. *T. W. Russell*—continued.

10378. And have you been reversed upon any of these dairy farm cases at all?—There is one case in the Court of Appeal that is not reported, of Aughney and Newton, a Carlow case. I have the official shorthand writer's report of the judgment of the Court of Appeal in that case. We were reversed in that, and it seemed to me that the judges of the Court of Appeal considered that it was a pasture holding, because it was a dairy farm.

10379. Was it not held by Lord Justice Fitz-Gibbon in Fiddis *v.* Montgomery that unless a tenant entered into an engagement to use as a pasture holding the holding should not be excluded?—I do not know Fiddis *v.* Montgomery, it was before my time, and I do not think the case is reported. Lord Justice FitzGibbon's judgment speaks for itself.

10380. We have had a good deal of evidence here upon the question of the position of the tenant under a limited owner?—Yes.

10381. Will you allow me to put a case in the County of Armagh to you that has made some impression on some of us here. There are some tenants there who are under middlemen, the head landowner being Trinity College?—Yes.

10382. The rents have been reduced 52 per cent., I think, by the Land Commission?—Yes.

10383. Supposing that Trinity College is forced to evict the middleman, what happens to the tenant?—If the middleman is evicted, then if the sub-tenants do not redeem, their interests come entirely to an end; but on the other hand, of course, if their interests are more valuable than the interests of the middleman, it would be manifestly their interest to redeem.

10384. It is very easy to use the phrase "redeem" in the language of lawyers. I want to bring out in net figures what it means; what does it mean?—The meaning of redeeming is this, that when an ejectment for non-payment of rent is brought, and judgment is recovered, on the writ of possession, if possession is taken, there will be endorsed the amount of rent then due.

10385. By the middleman?—By whoever the person is who is evicted, and if either the middleman himself or the occupying tenant within a period of six months after the writ has been executed pay the amount, then the possession is restored.

10386. Then I understand by redemption the tenants are not only to pay the rent to the middleman which they have already paid but they are also to pay the rent the middleman owes to the head landlord; is not that what you mean by redeeming?—I mean they pay the rent due by the middleman, and if they restore his interest they, so to speak, have a charge on the interest for the amount of money they have advanced.

10387. On what interest?—On whatever his interest was. If it was a lease, the lease is restored; if the middleman is only a tenant from year to year the yearly tenancy is revived.

Mr. *M'Cartan.*

10388. May not the rent payable by the middleman be greater than that paid by the two of them?—Of course that is so. If that is so, one would hardly think the middleman would allow his interest to be evicted, he would surrender under the Act of 1887.

Mr. *T. W. Russell.*

10389. If, by any chance, the middleman is evicted and the tenants do not redeem (I will put it that way), then their tenancy is determined?—It will come to an end completely, and then if there is any further payment of rent to the head landlord, that is a future tenancy and they are outside the Land Act.

10390. Can you give any opinion on the question of the statutory period; have you any ideas on that; I do not think it is a question of policy?—My ideas on the subject are these: that manifestly everybody must admit it is injurious to have too frequent resettling of rent, because it causes a period of unrest, and tenants do not settle themselves down in the same way that they would if they were to hold for a long period; but, on the other hand, if there was a likelihood of there being the same fluctuations in the price of produce, of which I can form absolutely no idea, then there might be some advantage in shortening the statutory period. But my present inclination is that the statutory period of 15 years should not be shortened unless there is manifestly a reason for making it a shorter period. There have been great fluctuations undoubtedly, and fluctuations chiefly, if I may say so, descending since the Land Act of 1881 was passed; but I can form no opinion at all; I am not competent to do it, nor to express any opinion as to whether that is likely to continue for the next 15 years or not.

10391. After all, although you think you are not competent to form that opinion, the duty is cast upon you of fixing what a fair rent is in case of appeal?—We must do it as best we can; that is all I can say. The valuers form their opinion, of course, upon what they consider not only has been the ruling rate of prices in the past, but what is likely to be the ruling rate for some period to come.

10392. You are aware of the evidence given here; I think I may say, with perfect propriety, the uniform evidence has been to the effect that the rents fixed in the early period, from 1881 to 1885, if they came into Court now would be subject to serious reduction?—I am aware that that is so certainly during a couple of years, but whether during so many years as that I do not know. As I informed the Committee, my connection with the Land Commission officially only dates from the end of 1890; and I only know of the rents fixed in the earlier periods by looking at the returns, or by mere hearsay.

10393. I am speaking of evidence given before this Committee?—I am no better judge of that evidence than any member of the Committee.

10394. It is absolutely uniform?—I believe there is strong reason to believe that during the earlier period (I do not fix the number of years) the fair rents were higher than if they were fixed at the present time.

10395. Do you think the shortening of the statutory period would tend to unsettle a tenant?—I think if he had to refix his rent every five years, or seven years, it might unsettle him.

Mr *T. W. Russell*—continued.

10396. You think he would settle down more rapidly with a rent that he believed to be unjust and unfair?—On the other hand, the rent might happen to be the more favourable rent if prices rose. On this question you cannot assume the prices would be always descending.

10397. I am afraid that is the assumption that most people come to on the question of agricultural values?—I can form no idea, as I said before, as to the future, or whether we have reached bottom, or whether prices are likely to rise or not. I can form no opinion on that; if prices did rise considerably, then it would be for the interest of the tenants to remain as they are, and not to have their rents revised.

10398. They have had all the advantage of the fall in prices, and they must wait for the chance of the rise that is to take place; that is the theory, is it?—If prices were to vary very much from time to time there would be an advantage in shortening the statutory period, that is all I say; but on the question of policy, as to what the period should be, I would rather not express an opinion, and at the same time repeat what I said before, that there are, of course, certain advantages in having the period as long as it can be.

Mr. *W. Kenny.*

10399. You were asked by Mr. Russell just now with reference to the question of middleman and sub-tenant?—Yes.

10400. And you said that in the event of the eviction of the middleman, and the sub-tenant wished to remain in his holding, he would have to pay the entire of the rent that would be endorsed on the writ?—Yes.

10401. That liability is not created by any of the land laws; it is the ordinary law?—That is the ordinary liability.

10402. Of a tenant of any class of land, whether a town holding or otherwise?—Whether he has a holding within the Land Act or not.

10403. In this country, as well as in Ireland, any sub-tenant redeeming would be obliged to go through the same form?—Certainly; his interest would come to an end otherwise.

10404. But in Ireland under one of the Acts, I think it is the Act of 1887, I am not sure which, the middleman would have a right to surrender his interest, would he not?—Under the Act of 1887, if the result of the reduction of rent is to make it for his advantage, so to speak, to surrender his holding, he can do so.

10405. You were asked with reference to town-parks, and that case of Killeen *v.* Lambert; did Killeen *v.* Lambert absolutely decide that population was to be the only test?—No, it did not. That was not the principle of the decision of Killeen *v.* Lambert at all. In Killeen *v.* Lambert each of the judges in giving judgment said this place, Claremorris, is undoubtedly a town; it has a population of over 1,000, it has fairs and markets, and it has Quarter and Petty Sessions.

10406. As I understand, they did not take the test of population as an absolute test?—No, there was no discussion, apparently, as to what was a town; in fact, the question does not seem to

Mr. *W. Kenny*—continued.

have been raised as to whether Claremorris was a town or not.

10407. Then, as I understand these various decisions in Archer *v.* Caledon, the Court there laid it down that the distinction taken between town and village was undesirable, and if the demand for accommodation land existed, and land bore an increased value for accommodation land over and above its ordinary letting value, it was immaterial whether the town was called in ordinary language a town or a village?—That was my view of the decision in that case; but it is right to say that the Court of Appeal say that they did not mean to decide anything of the kind; they did not mean to decide that there was no difference between town and village.

10408. I was citing from McCann *v.* Downshire?—Lord Justice FitzGibbon goes so far as to say there is no passage in any judgment in the Caledon case to show that a distinction between a town and village was not taken. The Lord Justice is under a misapprehension in that, for I have the official report of the Chief Baron's judgment, and the last words of his judgment undoubtedly do say that a place will be a town for the purpose of the Land Acts if the demand for accommodation land exists, although it may be merely a village for other purposes. That is undoubtedly the statement of the Lord Chief Baron, and also in the judgment of the Lord Chancellor in that case he most pointedly refers to it as being a place; he says, "I will not call it a town."

10409. I just want to know whether or not your decision in McCann *v.* Downshire has been affected with reference to the observations that I now read to you. "The decision established that not only must a demand for accommodation land exist, but the assemblage of houses must be something reasonably answering the description of a town; and that a mere hamlet or collection of houses was not to be treated as a town for the purposes of the Land Act." Is that law still?—There must be something answering the description of a town; but Lord Justice Barry then goes on to show what it is that answers the description of the town, and he uses practically the same words, a congregation of houses with inhabitants dwelling together.

10410. Let me read just four lines more: "Houses at a cross road, including a public-house, a blacksmith's forge, and National School, would create a demand, but it could not be held that such holding would be town-parks"?—No, because undoubtedly that would not be a town in any sense at all. I took especial care to point out that although the ruling test, according to the decision of the Court of Appeal in Caledon *v.* Archer, was the existence of a demand for accommodation land at an enhanced value, that was not the only test; there must be something reasonably answering the description of a town.

10411. I think all the Committee are of opinion, as Mr. Russell has put it to you, that undoubtedly it would be useful to have some authoritative decision upon the question of town-parks, either legislatively or by a decision of the Court of Appeal?—I think, if I may express an opinion upon the subject, it would not be so much by a decision of any Court as by legislation.

10412. Have

Mr. *W. Kenny*—continued.

10412. Have you any suggestion to make?—I have thought over it several times, and I can see no solution except a population limit. I do not see anything else. That was the recommendation of a former Commission. I do not wish to express any opinion as to what that limit should be.

10413. You were also asked with reference to pasture holdings, which are one of the exclusions in the 58th section of the Act of 1881, and it was put to you whether, having regard to the fact that the grazing lands of Ireland are improving, you would be of opinion that the 58th section of the Act of 1881 ought not to be more restricted. I think that is the way Mr. Russell put it to you. At the present time the holding must be a holding under 50*l.* valuation, and the tenant must be residing upon it?—Yes.

10414. Is it your opinion, or have you any suggestion to make to us as to that?—My opinion is that I am inclined to raise the limit. I mean to say to make it 100*l.* a year instead of 50*l.* There are certain classes of pasture holdings, notably those in Clare, that have been excluded which I do not think ought to be excluded, because they differ wholly from the Meath cases, or the Roscommon cases. The lands from their nature cannot be used in any other way. For my part I do not see why tenants holding lands of that description should not have the right to have a fair rent fixed.

10415. I suppose you would not withdraw the condition that the tenant should be a resident upon the holding?—Oh, no; I would leave the two sub-sections of Section 58 the same, merely altering the first sub-section by making the limit a valuation of 100*l.* a year instead of 50*l.* That would let in a number of tenants who are now excluded.

10416. You said with reference to these pasture holdings, that you did not think that the dairy farms came within the decision of the Land Commissioners where pasture holdings were excluded?—The way it stands is this: If the Committee look to the evidence that was given before the Cowper Commission by Mr. Justice O'Hagan, he mentions there that a case had come before him of a dairy farm, and that he had held that it was not within the exception, and that the case was then pending before the Court of Appeal. I have not been able to trace that case at all; but, as a matter of fact, as I have mentioned, in the Land Commission we have fixed rents on hundreds of dairy farms in the south and south-west of Ireland, but as a rule no question is raised, and generally with dairy farms there is a substantial amount of tillage, or there is some tillage.

10417. I believe the County of Limerick is composed almost exclusively of dairy farms?—Almost exclusively of pasture farms; no question is ever raised about the right of the tenant to have a fair rent fixed on the ground of dairy farms.

10418. You were asked with reference to any suggestions as to the mode in which the fair rent ought to be determined at the end of the 15 years' period, and I think you suggested that in certain cases the tenants should go before the Sub-Commissioners again?—What I suggest is this, that we should, the moment the originating notice is issued, send down one of our Sub-Commissioners or court valuers to examine the lands and investigate the question of improvements, and report to us on the several matters I mentioned in my evidence, and report what a fair rent should be, and that we should then make a conditional order fixing the rent at that amount and serve that on the parties. I am under the impression that in a vast number of cases that would be accepted as the fair rent. Then if the parties did not accept that, they should have a right to go before the Sub-Commission exactly in the same way as at present, that is to say, not with a fresh originating notice, but that the case should go on to the Sub-Commission.

10419. That it should take its course in the same way that a fair rent case takes its course?—I am not at all sure if we had that preliminary investigation of the case, and it went before the Sub-Commissioners, that there would be any necessity for sending down any court valuers afterwards. I think if the parties were not content with the decision of the Sub-Commission we would not send them down. That is only my impression. I think it might not be necessary.

10420. As I understand, you consider it would not be necessary to send a valuer a second time, having done so in the first instance?—Having done so in the first instance.

10421. Leaving it conditional whether you would not send him down again in the case of an appeal?—That is so.

10422. Am I to understand that you are of opinion that the right of appeal should be withdrawn in any case?—In my opinion it is an advantage to retain it, for the reason I have mentioned, that I think it would otherwise lead to great inequality in the rents in various parts of the country.

10423. We have had a good deal of discussion here, and some contradictory evidence, with reference to the effect of the great decision that was given upon the construction of the Land Code, namely, Adams *v.* Dunseath. I think you said on the last day that you were examined here that a great deal of that discussion is really an academic discussion?—So I understand from the evidence that has been given by a great many of the witnesses, namely, after you have made an allowance, and a liberal allowance by way of exemption of rent, on the improvement works, little or nothing would remain in the way of improved letting value, but in some cases, undoubtedly, there would remain something in the case of reclamation.

10424. Is that a very large percentage of cases?—In certain parts of the country, it depends upon particular districts. Either in the neighbourhood of bogs or in the neighbourhood of mountains there would always be a great deal of reclamation.

10425. Do you mean that there are a great number of cases, or do you mean that the cases in value or amount are large?—I mean a great number of cases; a great number of small cases.

10426. Can you give us any idea now in these cases what would be the amount, approximately, of the increased letting value which might be the subject of discussion between the landlord and the tenant?—It would vary so much in

Mr. *W. Kenny*—continued.

different cases, the nature of the reclamation, and so forth. I could give absolutely no information on the subject.

10427. You could not give us a minimum?—You must go for information to the Sub-Commissioners.

10428. You could not give us any information as to the percentage?—I could not give you any information.

10429. As to notices of the improvements, the tenant gives a list of the improvements upon his originating notice, the tenant puts a list of his improvements on his originating notice?—Yes.

10430. Have you ever known any hardship accrue to a tenant by omitting to insert in the originating notice any of these things?—There have been cases; I have known cases in which he had omitted something and offered evidence, and it was resisted, and we had to exclude it.

10431. Are these cases comparatively trifling?—They are not numerous, but there are some cases. Cases of that kind are more likely to come before the Sub-Commission than before us. If he has omitted, as I mentioned on a former day, to schedule the particular improvement, and it has been excluded by the Sub-Commission, he can serve an additional or supplementary notice, and bring the matter before us. If he does that at any reasonable time before the case comes on for hearing, we go into the question of that improvement the same as any other.

10432. That, as I understand, the head Commission do?—Yes.

10433. You are not talking of the Sub-Commissioners at all?—No, if he has omitted it before the Sub-Commissioners, and an appeal is taken. Then if he serves notice, and it comes before us, we go into the omitted cases.

10434. I do not know whether you can tell us anything about the percentage of difference between what may be called a competitive rent and a fair rent?—I could not tell. I could not give you any information on that subject at all. The valuers are the proper persons to give the information upon that.

10435. Mr. Bailey has told us that the difference would be about 30 per cent.?—Some valuers put that figure, but I am not sure that they are all agreed what the actual amount is. I do not think myself that it is possible to give any fixed percentage, because I think it would vary from various circumstances connected with the district and the holding.

10436. In fixing a fair rent drainage charges have to be taken into account?—Yes.

10437. Have cases come before you in which, although the tenant has had to pay an increased rent under the Acts of Parliament, still that there was really no increased letting value created by the alleged improvements of the Board of Works?—That is perhaps putting it too strongly, but cases have come before us in which the increased additional rent was largely in excess of the benefit conferred by the drainage works.

10438. The annual increased rent that could be put upon him under the Act of Parliament would be 5 per cent. on the amount expended?—I believe that is so.

10439. Therefore you have come across cases in which undoubtedly that increased rent that was put upon the tenant did exceed the increased letting value in his hands of the holding?—I think so. You understand, of course, how we act in reference to these things.

10440. I was just going to ask you; in these cases your Sub-Commissioners fix the fair rent without taking into consideration, as I understand, who is to pay the drainage charge?—No, not at all. The way it stands now is this: and I wish the Committee to understand this perfectly, because there are drainage charges of quite different kinds; drainage charges under the Land Improvement Act of 10 Vict. c. 32, that is, where money is borrowed from the Board of Works by the landlord, and applied in making the improvements on the holding, whether by way of drainage or building, and then drainage charges are imposed for the purposes of repaying the advance. There are then drainage charges and improvement charges under the Land Act of 1881, which now enables the tenant himself to borrow money from the Board of Works, and in that case, of course, the instalments are repayable by the tenant, and not by the landlord; but there is a third class of case, which is one of the commonest of all, namely, where a drainage district has been formed, the neighbouring proprietors joining together, and there in that case, after the money has been borrowed and expended, a certain charge is imposed on the various portions of land benefited, and that charge is primarily payable by the landlord, and then, both in that case and also in the case where the landlord has borrowed money to improve the holding under the Land Improvement Act of 10 Vict., the Board of Works, on the application of the landlord, may assess an additional rent.

10441. That is the case I want to draw your attention to?—The way the Land Commission deal with those cases is, they fix the rent on the lands as they stand, quite irrespective of what may have been the rent the Board of Works put on by way of additional rent, and then, taking the last case, and in the case in which the landlord has borrowed the money for the purpose of improving the holding, they put upon the face of the order a statement that the landlord for the future is to pay the entire of the drainage charge and maintenance charge. The form of the order is this in such cases: "It is ordered that the fair rent of the tenant's holding be fixed at an annual sum of £ , and it is declared that the rent has been so fixed upon the basis that the drainage and maintenance rates payable to the Board of Works in respect of works already executed by which the holding is benefited should be borne by the landlord without power to cast any of the liability on the tenant." Because in that case the landlord has the benefit by means of any increased value, whatever that increased value may be; the lands have been valued as improved by means of the works, the tenant pays no portion of the charge.

10442. I do not know whether you have in your mind any cases upon the Cosby Estate in which the Sub-Commissioners in fixing the fair rent reduced the rent value which was anterior to the improvements, and notwithstanding the landlord

Mr. *W. Kenny*—continued.

landlord had to continue to pay the drainage charges?—Those cases were never brought before me, but a somewhat similar case, which is a reported case, Gabbett *v.* McCarthy, in 30 Law Reports, Ireland, page 720, came before the Court of Appeal, on an appeal from us, and the Court said that so long as the rent fixed was not less than the additional rent imposed by the Board of Works, the Land Commission were within their rights in fixing the rent at the amount they did.

10443. Then it is possible to have the old rent which was payable before the increased letting value was put on by the Board of Works reduced and still to have the landlord liable to pay the charges?—It is quite possible in cases in which, for instance, the expenditure in drainage has not proved remunerative.

10444. I ask you, do you consider that to be a hardship on the landlord?—It is not my business to consider things hardships, but to carry out the law, whatever the law may be.

Mr. *Fuller.*

10445. I should like to carry that out. I thought I understood that the tenant had a power to borrow and then the tenant had to pay the interest?—Under the Act of 1881, the 31st section, as well as I recollect, p. 295 of Mr. Cherry's book, the Board of Works can now make an advance to the tenant himself to execute drainage works or any other improvements. In that case he pays the drainage charge, and he continues to pay the drainage charge, but the improvement he has made by means of that money is treated as his improvement, and we exempt him from rent on it; he pays no rent in respect of that. You can understand, for instance, if you take an example, if a tenant borrowed 200*l.* to execute certain drainage works on his holding, he pays a certain instalment to the Board of Public Works, but when we are fixing a fair rent we exempt him from rent in respect of that 200*l.*

10446. Carrying that a little further, then the tenant has to bear the deterioration of the land in case the drainage does not come up to his expectations?—That is so.

10447. Exactly in the same way that the landlord would have to bear the deterioration of the land, where he borrows money, expecting to have the land improved?—That is a case of expenditure in which he has borrowed money himself, and expended money himself on his own land, because it is entrusted to him to expend. If it has not proved remunerative he has to pay the Board of Works.

10448. Exactly in the same way in which the tenant has to pay?—Exactly the same as if the landlord had borrowed the money from a private lender.

Mr. *W. Kenny.*

10449. The landlord makes the expenditure, and borrows the money from the Board of Works for the benefit of the holding in the hands of the tenant?—For the benefit of what used to be his own reversion.

10450. But, substantially, he has no reversion now. Now, upon the question of limited owner, supposing a rent was fixed in the lifetime of a limited owner, I think you gave it as your opinion that the remainderman would be bound by any decision of the Land Commission upon the question of either town-parks or demesne?—I think so, but at the same time I guarded myself by saying that that is an arguable question as to whether it operates as a judgment *in rem* or not, but in my opinion that is so.

10451. I suppose you go the length of saying it is a very arguable question?—I do. There are very few questions that are not very arguable, that is to say, that you will not get counsel to argue at very great length.

10452. On the question of the redemption of rent, you have expressed your opinion that you consider it somewhat oppressive that the tenant should be rented on his improvements?—Recollect that only has reference to fee-farm grantees. Long leaseholders are not rented on their improvements.

10453. I am talking of the Redemption of Rent Act?—Long leaseholders under the Redemption of Rent Act are not rented on their improvements, but it is only persons holding at a fee-farm rent.

10454. The landlord has always an option under the Redemption of Rent Act?—He has.

10455. He can either get his rent redeemed, or the tenant may go into court and get a fair rent fixed?—Yes.

10456. Mr. Commissioner FitzGerald told us that in a great number of cases now, the landlord in exercising the option exercises it in favour of allowing a fair rent to be fixed?—He does.

10457. He told us that was on account of the heavy costs that were involved in the redemption of the rent?—From heavy costs in showing title and redeeming head interests; sometimes two or three head interests have to be redeemed; that is very expensive.

10458. Undoubtedly the compulsory principle was to some extent introduced in this redemption of rent. The landlord has to submit either to his rent being bought, or to have a fair rent fixed?—That is so.

10459. In the redeeming of the rent, it is a compulsory sale?—It is a compulsory sale; if he gives his consent to the redemption, it is in the nature of a compulsory sale, and the rate of purchase is fixed by the Land Commission, if the parties do not agree.

10460. Do you consider that the same principle of compulsory purchase enters into the Redemption of Rent Act, which is applied in the Lands Clauses Act. Is not it a compulsory purchase under the Lands Clauses Act?—We do not regard the principle of the Lands Clauses Act as applying to this case.

10461. Do you think there is no analogy?—I do not think it is the same question at all.

10462. Do you think there is no analogy between them in working out?—There is, perhaps, some analogy, I do not think it is precisely the same thing; one is a purchase by a public company for public purposes, the other is a private sale.

10463. I will ask you again, on the question of

Mr. *W. Kenny*—continued.

of hardship, to say yes or no; do you consider it a hardship on the landlord, whose rent is being bought up by a person who is virtually the owner in fee; because the tenant under a fee-farm rent is really owner in fee; do you consider it a hardship that he has to spend several hundreds of pounds in making a title for his purchase?—As I said at an earlier stage to-day, I do not think I ought to be asked as to what I consider hardship and what I do not; I consider many things hardships.

10464. I think you told us the first day you were examined as to when the 15 years expired?—Yes.

10465. I think your opinion was that the old rent would revive?—No, not at all; the contrary, because you will observe the language of the 8th section is to fix a fair rent for the holding. It does not say to fix a fair rent for the 15 years or a statutory term.

10466. You say the landlord can serve a notice to quit on the tenant after the 15 years?—I am clear on the subject, because if you look at the 8th section, the 13th section, and the 5th section, the only restriction on an eviction is a restriction limited to the currency of the statutory term.

10467. But, supposing the landlord, being capricious, serves his notice to quit at the end of the 15 years, and the tenant considers that he has an interest in the holding, and does not want to go out?—The tenant, as a matter of course, can serve a notice, and have a fair rent fixed. He can stay the ejectment proceedings, as a matter of course, and then, once a fair rent is fixed, another 15 years' term begins.

10468. So that where a tenant has an interest in his holding it is idle to suggest that any landlord would think of turning him out under any circumstances?—The only thing is the necessity to keep applying for one 15 years after another, to keep up the continuity of the interest.

10469. Supposing the tenant did not wish to continue, and that he acquiesced in the notice to quit, and allowed himself to be evicted, would he not have a right to compensation under the Act of 1870, as modified by the Act of 1881?—He would for improvements.

10470. Would he have no right for disturbance?—If he was evicted, then I think so.

10471. Both?—Infallibly so.

10472. So that he has two rights; he has the right to continue on as he likes?—Yes.

10473. As a tenant, and, according to your opinion, at the fair rent fixed by the Sub-Commissioners?—Yes.

10474. Or, if he wishes to go out he can get compensation both for disturbance and improvements under the Act of 1887?—Yes.

10475. You gave us some valuable evidence on the question of the occupation interest; whatever the Sub-Commissioners may think on the subject, you consider that such an interest exists?—I believe that there is an occupation interest, but it would be quite impossible for me to define the value of it, or the extent of it. I think it is a valuable interest. I think I should have mentioned the last day, in reference to this occupation interest, that in that same

Mr. *W. Kenny*—continued.

Report of the Lords Committee to which I have referred, Mr. William Gray, a well-known valuer in the County Westmeath, who was then attached to a Sub-Commission, gave evidence before that to Committee. Probably the Committee does not know that in the earlier stages of the Land Commission, the lay Commissioners used not to value the land themselves, there was a valuer attached to the Sub-Commission to value the lands for them, but Mr. William Gray, who was for some time attached to a Sub-Commission in that way, gave evidence before the Lords Committee that he was in the habit of deducting an arbitrary sum of 15 per cent. for this occupation interest, and Judge O'Hagan and his colleagues said he got no instructions from them at all to that effect, but I take that as meaning not that they denied the existence of the occupation interest, but that they thought it was a very erroneous principle to deduct a uniform sum of 15 per cent. in every case.

Chairman.

10476. What was the exact language used by Judge O'Hagan?—That is in the Appendix to the Second Report.

Mr. *Sexton.*

10477. Did Judge O'Hagan or any Land Commissioner say in regard to the occupation right that any instructions to make any deduction in respect of it from the letting value in fixing the fair rent had ever been issued to any subordinate of theirs?—The question apparently was never raised before them in any way, nor any instructions given to anybody on that subject, as you see from that same report. Judge O'Hagan goes very fully into it.

Mr. *W. Kenny.*

10478. I think you took a distinction, in referring to Lord Justice FitzGibbon's evidence, in the application of the value of this occupation interest in cases where there were improvements and in cases where there were no improvements?—I think there is no difference, I think that the occupation interest applies to the holding, improved or unimproved.

10479. I presume it would vary according to the number of years a tenant would have?—I cannot express any opinion on that, I have never considered the question, and I might only mislead the Committee and embarrass myself in some future judicial decision.

10480. I think you told us that Mr. Trench, who was one of the Commissioners, had given a decision on this question?—Only on the question of true value, that is all I said.

10481. I understood you to say that the question of the value of the occupation interest was decided by him?—No, not at all; as far as I can make out, this question of the occupation interest has not been raised before any Sub-Commission or before the Land Commission in any shape or form, except by what seems now the practice of valuers.

10482. There is no decision of the Court of Appeal upon it up to the present time?—No, Adams *v.* Dunseath is the only decision that at all

Mr. *W. Kenny*—continued.

all refers to the existence of such a question even.

10483. Then, as I understand, Adams *v.* Dunseath has left it open also?—So I consider; in Lord Justice FitzGibbon's judgment in that case he says he does not wish to prejudge the question which may arise afterwards.

10484. I think he said the question was a question altogether for the Land Commission?—I do not think he said that. He said this question was not before him, but the question whether there would be an apportionment or not would be for the Land Commission if this interest did exist. I take it to be that the Land Commission should first decide whether there was an interest of this nature, and then should apportion the rent according to that interest, and then if the question arose before the Court of Appeal, it would be time enough for them to consider.

10485. But the Court of Appeal did not prefer to decide what was the interest of the landlord and tenant under the section of the Act?—As far as I can make out from the decision in Adams *v.* Dunseath, the only interest of the tenant that is there referred to as being admittedly an existing interest is the interest in improvements, the only admitted interest.

10486. It was not decided in Adams *v.* Dunseath that that was the only interest?—I do not say it decided that it was the only interest. Certainly it was the opinion of some of the judges, Lord Morris, for instance, that it was the only interest, and it would seem to me probably to be the opinion of the Lord Chief Baron that it was the only interest; but I do not think Sir Edward Sullivan, or Lord Justice FitzGibbon, or the Lord Chancellor Law were of that opinion. They left the other question open.

10487. Your opinion with reference to it, namely, that the tenant has an occupation interest, is based, as I think Mr. Sexton put it to one of the witnesses, upon the fact that the Act of 1870 gave compensation for disturbance and for improvements, and that the Act of 1881, in fact, gave it fixity of tenure?—No, not on that alone; I think the mere possession of a farm gives a certain amount of goodwill in this way; the supply of farms is limited, you cannot create a new farm unless there is land to make it out of; any person who is looking for a farm has only a limited choice, and he will give a certain sum, whether it be small or great, in order to get a farm to suit his purpose. That is quite irrespective of the improvements on the farm, and also quite irrespective even of the tenure of the farm; to get as a going concern a working farm such as he wants, he will give something for the occupation.

10488. Would he not give a great deal more for the occupation if the tenant whose interest he was buying could not be turned out of that farm by notice to quit?—Of course he will give more if the tenant has then a right to get compensation for disturbance; he will give more if the tenant has executed valuable improvements.

Mr. *Sexton.*

10489. And still more if the tenant has a right to stay perpetually?—Yes, certainly. Of course, the tenure is of enormous importance in the

Mr. *Sexton*—continued.

value; the fixity of tenure that the tenant has obtained under the Act of 1881 largely increases the value of the tenant's interest.

Mr. *W. Kenny.*

10490. Just going back again, as to your suggestions as to what ought to take place at the end of the 15 years, when the tenant comes to get a new rent fixed, we have been told that the Sub-Commissioners, after valuing, take into consideration the productive capacity of the soil and the proximity to markets and towns, railways, and so on; why do you consider it necessary that the holdings should be again inspected and valued?—They must be again inspected, because the land may have been greatly deteriorated, or the land may have been greatly improved.

10491. I wanted to know your reason?—That is one of the chief reasons.

10492. You say if the tenant during the 15 years has neglected his land, or not improved it?—If the tenant has allowed the land which was originally reclaimed to run wild again, there would be very different considerations then as to exemption from improvements than there otherwise would be if the land had remained in its improved state and the improvements had been kept up.

10493. I believe there are schedules of prices, are there not, published by the Land Commission?—There are, the prices are collected and issued by the Agricultural Department.

10494. Can you tell us how these prices are ascertained?—I could not, I can only tell you about my own department. Mr. Wrench is the head of the Agricultural Department, and we have a division of duties between us, and he attends to that.

10495. Has he a staff under him who collect statistics?—There is a staff connected with the Agricultural Department, and there are reliable persons, as far as I know, in the various towns who collect these statistics and furnish them to the Land Commission, where they are compiled.

10496. We have been furnished with a Return showing a number of selected cases in which there were agreements out of court in the early days of the Land Act between landlord and tenant?—Yes.

10497. Which were not recorded?—Yes.

10498. In these cases the tenant afterwards came into court, and he got a fair rent fixed at amounts under those which he had agreed with the landlord?—Yes.

10499. Have you had, in your experience, any appeals in which that has come before you?—Several such appeals have come before me.

10500. Did you find in any such cases that the tenant had been fairly, or unfairly, treated by the landlord?—I never enter into these considerations at all. The way the matter came before me was this: one of these agreements and declarations was produced as a reason why we should fix a rent about the same as the tenant was then satisfied to pay. I have always rejected these agreements and declarations, and never paid the slightest attention to them, having regard to a decision of my own in Woodside *v.* Massey, which was afterwards confirmed by the Court of Appeal. That was a case in which

Mr. *W. Kenny*—continued.

parties had submitted the amount of the rent to be fixed by arbitrators, but they had not taken the proper steps to have the award made a rule of the Land Commission, and I held that we could not pay any attention to that at all; and the Court of Appeal were of the same opinion. Therefore, I never pay the slightest regard to these agreements and declarations, but fix the rent as it should be now, quite irrespective of what the tenant might have been willing to pay at the time the agreement was entered into.

10501. Then do I understand that the question of hardship or no hardship would not come before you?—Generally speaking, the rents fixed by these were higher; because, as a rule, they were entered into at a very early stage of the proceedings of the Land Commission, speaking in reference, say, to the years 1882 and 1883, when undoubtedly fair rents were higher; but I have no materials at all for knowing whether these agreements, which were produced, were agreements fixing a rent at a higher rate than judicial rents were then being fixed, or not. I know nothing about it.

10502. I think you say that if the judicial rents that were fixed in these early periods came before you for revision, say in 1885, 1886, and 1887, they would have been reduced just like the rents that were fixed by agreement out of court?—I imagine so.

10503. I do not know whether it would be possible for the Land Commission to give us a return, showing the difference in the percentage and reductions on the former rents, in the two cases of rents judicially determined, and rents which were fixed by agreement since 1881; to give us a percentage since 1881?—Any of these returns would take a long time to make out.

10504. Would it be possible?—It would be possible, but I was thinking whether the materials were not available in the annual reports. In our annual reports we give the rents that have been fixed by agreement and declaration since the last report, and we give the rents that have been fixed by Sub-Commissions and by County Courts during the same period, and it would be easy to compare those.

10505. Could that be easily done in the Land Commission for us, so as to give us a percentage and save us the trouble?—I will direct inquiries to be made, and if it can be done it shall be done for each year. I am not sure that the whole materials are not already in the reports.

10506. The materials may be there for arriving at the percentages?—The percentages are given in the reports.

10507. The percentages of reduction of old rents in the two cases?—Take, for instance, this last report of all; we have for each particular county the number of agreements lodged, the former rent, and the judicial rent; and it shows for each particular county the percentage of reduction. We have a similar table for the same county in reference to the rents that have been fixed by the Sub-Commissions and Civil Bill Courts, and I think you will find that will be what you require. Of course it may be that in one particular county during the period there were no agreements and declarations. I do not think the Land Commission could supply any additional information than what is contained already in that table.

Mr. *W. Kenny*—continued.

10508. Only one other question. We have had some information as to the tenant being deterred from appearing by the fear of costs. In your experience have you found that tenants are deterred from appearing on the ground of costs?—I have no means of knowing that; any experience I have is to the contrary; and in this way: very frequently when we have the court valuer's valuation identical with the fair rent fixed by the Sub-Commission, a tenant will still go on with his appeal or notice of rehearing; and, if he withdrew, even at the time when the case is called on, he would save himself a certain portion of the costs; but very often he goes on.

10509. To fight it out to the bitter end?—As a rule he thinks when he has already feed his solicitor and engaged his witnesses, he ought to fight it out.

Mr. *Dillon.*

10510. I think you stated you were of opinion that an appeal in cases on value should still be retained?—I think so; I expressed my view and you saw the reason I gave, chiefly the reason that otherwise there might be inequality.

10511. Can you give the Committee an idea of your method of procedure in the Court of Appeal in determining questions of value. Can you give me a sketch of the present method of valuers in determining the question?—I do not know of any other improvement that could be made.

10512. I asked you what the present method was?—In the first place we send two court valuers to value the lands, just in the same way as the two lay Sub-Commissioners go on the lands. Then, in addition to that, like every other tribunal, we have evidence before us on behalf of landlord and tenant, and considerable evidence of value, sometimes three distinct witnesses on each side going into details as to value, and then we make up our minds on the evidence given before us in Court, and on the report of the Court valuers, and of course looking to the report of the Sub-Commissioners.

10513. You said, I think, that you give the greatest attention to the evidence given on behalf of the landlord and tenant?—We pay great attention to the evidence, following it as evidence must always be followed. Sometimes it is very good, and sometimes it is very indifferent. You are not to suppose when I say we give very great attention that we necessarily follow it.

10514. Was your attention directed to the evidence of Judge Shaw?—Yes.

10515. And to his statements. I will just direct your attention to Question 9039?—I observe he stated that he acted always on the report of his court valuer.

10516. Here is his answer, 9039: "And what you do is this: you decide it by rejecting the evidence of both of them, and by accepting evidence which is never put before the Court?—(*A.*) Exactly. For what purpose do I sit; to take the evidence of the landlord and to take the evidence of the tenant; it is a form of evidence as to value; I disregard the evidence altogether (I do not see how I could do otherwise) and take

Mr. *Dillon*—continued.

take the evidence of the man who is appointed by the Court to assist me. Well, I must say that I consider that a most unsatisfactory system, and I consider that it puts the County Court judge in a most unsatisfactory position"?—That is not our principle at all; we have extremely eminent valuers produced before us, and certainly they very often influence our decisions.

10517. You yourself have no knowledge of the value of land?—I have no more knowledge than is required by a man practising at the Bar. I could not judge myself of what its value would be; I judge of it on the evidence and on the report of these experts.

10518. Is it not hard, then, to understand how the evidence of valuers appearing before you and giving their different values of a farm, which you have never seen, can influence your minds?—It is the same thing in every way in every other department that I know of; every case of value in which there is any controversy is decided either by a judge or by a jury on the evidence given before them; on conflicting evidence; and for example, a very important class of cases under the Act of 1870, claims for compensation for improvements, those are all decided by the County Court judge on hearing the evidence, and without inspection by anyone; on the evidence given by the tenant and his valuers and by the landlord and his valuers.

10519. Could you say roughly how long each case on an average takes where there is an appeal on value; I set aside the cases where there are law points and law arguments, but where there is merely a question of value at issue?—Yes.

10520. About how long would you say a question of that sort took in your Court?—Some take a very short time, and some of them take a considerable time. Some cases of value do not take more than 10 or 15 minutes, because there would be no evidence excepting the tenant's own evidence and his valuers, and the landlord produces no evidence at all. On the other hand, if there is any controversy about improvements the cases may take a considerable time. As a rule the solicitors throughout the country are so familiar with the work that they bring things to a point at once, and usually the first question is that the Sub-Commission have allowed so much for improvements; so many perches of fences made, and acres drained, and so much reclaimed. Is there any dispute about that? Very often there is no dispute at all, and that passes.

10521. In your Court it is a rehearing?—Yes.

10522. Therefore, the whole question is opened again?—All questions that have been before the Sub-Commission or the County Court judge coming up again before us are open.

10523. Therefore, you have ultimately to fix the fair rent of the holding?—In all cases of appeals that come before us.

10524. There must be some principle present in your mind by which you fix a fair rent?—The principle present in our minds is on the evidence; simply acting on the evidence before us, aided by the report of the court valuers.

10525. In order to judge of that evidence you must have some idea of what a fair rent is?—

Mr. *Dillon*—continued.

We have precisely the same idea that the Act of Parliament has given us, "considering all the circumstances of the holding and district, and the interests of the landlord and tenant."

10526. Surely you must be aware that we have the most conflicting evidence before the Committee as to the different ideas by which the tribunals of valuers determine what is a fair rent?—I merely act for myself. I take it as a question of evidence. I have one expert saying that a fair rent under all the circumstances is so and so, another saying that it is so and so, and I form my own opinion as to which is right.

10527. Do you question these experts as to what they mean by a fair rent?—No, you cannot question experts as to what they mean by a fair rent, because fair rent apparently is undefined. We have questioned all these experts almost without exception, and the evidence we have got is the same.

10528. I put another answer to the very many that have already been read to you. This is from the evidence of Judge Shaw: "On what principle does your valuer fix the fair rent; does he fix the fair letting value of the holding as for a solvent tenant desiring to enter intending to pay that rent from year to year? (*A.*) Yes, I think he puts down, as a general rule, what he would consider a fair rent for a man going into the land, having no previous connection with it at all, taking it as it stands; then he deducts from that a certain amount for improvements (if there are any); then he perhaps deducts a certain amount for remoteness from markets or he adds something for proximity to markets, and then he puts in something for turbary, if the turbary is allowed." Is that your idea of a fair rent?—That is not my idea of a fair rent. My idea of a fair rent, is this, as I have mentioned already, that I think the occupation value ought to be taken into consideration. Further, in my opinion it is taken into consideration both by our Sub-Commissioners and also by the valuers who give evidence before us both on behalf of the landlord and tenant.

10529. Supposing the occupation value were taken into consideration, do you think that would make a difference, or a considerable difference, in the rent fixed?—I do think it makes a substantial difference.

10530. In a matter of procedure in the Court, do you ask the valuers who have to appear before you, are you allowing for occupation value?—We do not.

10531. Do you know on what principle they have fixed the rent; we have evidence from nearly every single official?—Unfortunately fair rent is undefined; in valuing anything else that I know of, the test is market value, and the test would be the letting value to an outsider; but we are excluded, we believe, under the terms of the Statute from fixing a fair rent at anything at all like the market value, and therefore we must leave it to these gentlemen, the Sub-Commissioners, to say what, according to their experience, would be a fair rent; that is a reasonable rent for that individual tenant to pay, having regard to his occupation interest, and having regard to all the circumstances of his holding, and I cannot give any further definition of fair rent than that.

 10532. In

Mr. *Sexton.*

10532. In the Land Commission you fix fair rents, both as an original Court and also as a Court of Appeal?—Yes, but except by consent, not as an original Court.

10533. And also as a Court of Appeal?—Almost exclusively as a Court of Appeal.

10534. You have been doing this for 12 or 13 years. Have you and the other Commissioners, in fixing fair rents yourselves, agreed between you whether the occupation of the right is measured in valuing the fair rent?—We have never had the question discussed at all.

10535. Between you?—Never; because the question has never been raised before us. As I mentioned, the valuer says, "I value the lands so much in the hands of a tenant."

10536. But you, as a Court, in fixing a fair rent were, in your own words, to have regard to the interest of the tenant. Do you ever agree between yourselves that that amount should have regard to the occupation right?—I can only say, as I said before, that it seems to me that regard has been had in the valuations that have been made already, and that is the way we take it into consideration; as to putting a particular amount on what the occupation value is, we never attempt it.

10537. Has the matter ever been referred to between you in deliberation?—It never has been discussed generally. The way it has been discussed is this: we have discussed from time to time as to whether there was a difference between the rent that would be payable if the land was in the hands of the landlord or the land was in the hands of the tenant, and we have generally agreed that the proper way to fix it was in the hands of a tenant.

Mr. *Dillon.*

10538. As a matter of fact, for anything that passes before you in the court in the way of evidence, can you say whether the valuers took into account the occupation interest of the tenant or not?—Except in this way: that they value it as so much in the hands of the tenant, and then sometimes they have been asked, "Would you value it at the same amount if it was in the hands of the landlord?" and they say "No, we should value it higher."

10539. You have seen nearly all the evidence?—I am speaking of what passes in my own court. I cannot tell what happens elsewhere.

10540. Then it amounts to this, that in your court the matter has never been investigated or inquired into?—The matter has never been investigated or referred to in this way, that nobody has ever raised the net question as to whether there is an occupation interest that should be allowed for or not.

10541. Does it not occur to your mind that that occupation interest, if it is an important estate and property of the tenant, ought to have been raised, and would be adopted just as much as the improvements?—I think that the question might very well have been raised, but it never has been raised.

Mr. *Sexton.*

10542. If any litigant should now bring an appeal to you upon the ground that the Sub-Commission, in fixing the rent, did not make a deduction for his occupation right, and if you find that to be the fact, would you reduce the rent upon that ground?—I would; and what I would do in a case of that kind would be, I would state a case for the Court of Appeal as to whether it was a proper thing to do.

Mr. *Dillon.*

10543. Then it is an absolutely open question?—It is a question which, as far as I can make out, has never been decided, and is to a certain extent an open question, only I say in my own opinion in practice it has been acted upon.

10544. Let me ask you this; have you ever had any evidence in your Court as to the amount of the value of the occupation right of any tenant in Ireland?—Never.

10545. How can a property be allowed for if there never has been any inquiry as to what is its value?—Because valuers, whether they be right or wrong, say we adopt a principle in valuing land in the hands of what has been called the sitting tenant, and not valuing it as in the hands of the landlord.

10546. That is not the evidence we have got, the evidence we have got is that the valuers were bound to take their land from the legal Sub-Commissioners?—I have referred the Committee to Colonel Bayly's evidence, and to other evidence.

10547. We refer to all the legal Commissioners, Judge Shaw and some of the Sub-Commissioners, who declared that is not the law, and that they had laid down the law to be that they are to value the land in the words I have just read to you from Judge Shaw, and the Sub-Commissioners declare that they take their directions as regards law from their legal Commissioners?—Colonel Bayly shows you distinctly he does nothing of the kind. I have read the evidence all through, I cannot profess to have it by heart, but I understand some of the legal Sub-Commissioners said they never discussed what they considered mere questions of value.

10548. Is this a question of value or a question of law?—It is a question of value ultimately, because the question of value is to determine what is the value of the occupation interest.

10549. It is an extremely important question, I should have supposed it was a question of law?—The existence of an occupation interest is a question of law.

Mr. *Sexton.*

10550. The interpretation of a fair rent is a question of law?—The question of fair rent, as to what fair rent means, is a question of law, and, as Judge O'Hagan said when examined before the Committee of the House of Lords, all you can do is to read out the section. The Land Commission cannot give any further definition of a fair rent. We do not know what it is, except what the Act of Parliament has said.

Mr. *Dillon.*

10551. Is it not clearly a question of law whether fair rent is to be the rent which the land would fairly let for to a new-comer, or whether a deduction

Mr. *Dillon*—continued.

deduction from that fair rent is to be made in respect of an occupancy in the tenant?—Yes.

10552. You heard one of the legal Sub-Commissioner's evidence that he could not understand what the meaning of occupancy rent is?—I do not find that there is any settled practice on the subject.

Mr. *T. W. Russell.*

10553. Is it not a question of value dependent solely upon a question of law?—It is a question of value dependent on a question of law, namely, as to the existence of this right of occupation.

Mr. *Dillon.*

10554. And the question is entirely unsettled?—That question is apparently unsettled. I mean to say unsettled in the way that nobody has raised it as a net question, but it appears to me that it has been settled by practice.

10555. As the principle on which judicial rents or fair rents are calculated is a very important question, would you allow me to direct your attention to the evidence of Mr. Heard, who is the County Court valuer for the County of Cork; and I asked him on what principle he arrived at a fair rent; that is in Question 9532: "What do you think of," that was in determining a fair rent. (*A.*) "I think I may explain it thus: I go upon a farm, and I find that farm would support five or six cows; I know what those cows ought to give, and what they ought to bring in in the year. I check my section rent by that, each field, and I check the stock rent; I check one by the other. (*Q.*) When you say you check one by the other, have you present to your mind any principle of the division of net profits as between the landlord and the tenant? (*A.*) Yes; we will suppose now that a dairy cow is bringing in about 5*l.* a year; I take off a pound for deterioration (that is, keeping up the stock), and give half to the landlord; that would be 2*l.* (*Q.*) And half to the tenant? (*A.*) Yes. (*Q.*) Of course you are speaking now of grass? (*A.*) The grass would be 5*l.*; I take off a pound for deterioration, keeping up the stock, and I allow 2*l.* to the landlord. (*Q.*) That is to say, you allow the landlord two-fifths of the gross produce? (*A.*) It comes very close to that. (*Q.*) Two-fifths of the gross produce on a dairy farm? (*A.*) On a dairy farm. (*Q.*) You would not apply the same principle to a village farm. (*A.*) No; that would be one-third, one-third to the landlord, one-third to the tenant, and one-third for his expenses in labour and seed and expenses of that kind." There you see the County Court valuer values the farm without the smallest reference as to whose hands it is in, or to whom he is valuing it for. He values on a principle which is entirely novel and different from the principle laid down by anybody else in which he calculates the gross products and makes an arbitrary division which many people may think a very high proportion given to the landlord. Do you consider that to be a proper way to fix a fair rent?—I do not know whether in the proportions he takes, he takes into consideration the fact of the tenant being in occupation or not. I cannot form any opinion on that.

Mr. *Dillon*—continued.

10556. He does not give the slightest indication that he does?—He does not say anything about it. The proportion given to the landlord might be a third if the lands were in the hands of the landlord.

10557. From the evidence we have before us it seems a very high proportion, one-third of the gross produce of a farm to go in that way?—The Committee will already have observed that the witnesses examined before them simply say they value it according to their experience. That leaves the question entirely at large, and we have no means of knowing what the limits of that experience are, or what the criterion they apply to it is. The difficulty arises from the absence of a definition of a fair rent. Market value is obviously not to be the value; it is something under the market value, but how much under the market value the Act of Parliament has not told us.

10558. The fact remains, that all positive evidence, as regards the administration of the law before us, would go to show that the occupancy interest of the tenant is entirely neglected, and that the value is on the land as it would be valued to a solvent tenant going into possession?—I do not think that is really the practice at all in the Land Commission, and I think the rent is considerably lower than an outsider would pay.

10559. You have not inquired into that fact in your Court by evidence?—The evidence has been always given, apparently, that the land was valued so much in the hands of the tenant.

10560. Now on the question of improvements. What is your method of allowing for improvements?—The method of allowing for improvements is just the same as has been described by most of the witnesses here as I understand, to ascertain what the cost, or rather the present value of the improvements is, and to settle the allowance in respect of that. It is not to give a sum that would gradually repay those improvements, but to give such a sum as will insure that the tenant is not rented on the value of his improvement works.

10561. The sum you give is simply an interest?—The sum we give is simply equivalent to interest. It would vary of course according to the nature of the improvement.

10562. And not on amount. You stated that fully in Answer 10215, therefore you do not look to repay the principal expenditure?—No, certainly not. We treat the improvements as if the improvements remain there still, the property, so to speak, of the tenant, for which he is to be compensated in case the tenancy is determined at any time.

10563. Do you adopt the principle of allowing the tenant an interest on his outlay?—An interest on the value of his outlay. His outlay may have been unremunerative. He may have spent a good deal more money on the property than it is worth. We would not allow interest on the money he has actually spent, but interest on the present value of his improvement work.

10564. Do you remember a very interesting

Mr. *Dillon*—continued.

case that came before you on the estate of Villiers Stuart of Dromana?—I do.

10565. This is such an extremely interesting case, as it affects an enormous district of the West of Ireland and these small reclamation tenancies, that I must read out a portion of your judgment, and ask you some questions on it. The reason I read this out is, that I want to know whether it is an accurate report: "By the Land Act of 1881 the tenant was to be exempted from rent on improvements in respect of all improvements made by him or any of his predecessors in title, for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title; the question the Court has to consider was how far this principle was applicable to the cases now before them; first, they had two cases in which Patrick Moore was tenant, and they would take the second case first, in which the lands were held under a lease of 1st May 1826, made by Mr. Villiers Stuart to Michael Costine, for his own life, at a nominal rent of 6*d.* a year; it appeared that prior to the date of this lease the holding, which contained 20 acres, had been reclaimed by Michael Costine, and had been inclosed from the mountain, and, in consequence of that, apparently he was given this lease at a nominal rent; at the expiration of the lease in 1876 the rent was fixed at 5*l.* 10*s.* a year, about 5*s.* the statute acre; when the case came before the Sub-Commissioners, owing to press of business, the holding was only valued by one Sub-Commissioner, and the case was practically disposed of by him without the assistance of the legal Assistant Commissioner to direct him on the question of law; the Court had to consider now, was the enjoyment of this holding for 50 years at a rent of 6*d.* a year compensation for the entire or portion of the improvements effected by the original lessee or his successors prior to the date of the lease. The Court valuer estimated the fair rent at 4*l.* 5*s.* if the improvements were not taken into account, and they might reasonably conclude that Costine and those who succeeded him had a holding that was worth at least 4*l.* or 4*l.* 5*s.* a year for nothing a year for a period of five years; so that for 50 years they had practically a profit of 4*l.* a year out of the holding. It seemed plain to demonstration that that was complete compensation for any improvements on this holding. In considering these cases the Court put no rent upon the buildings at all, they took into consideration the fact that holdings of this nature required continuous expenditure both of labour and manure, to prevent them from reverting into their natural state of heather and furze; but taking all these things into consideration, which were taken into account by the Court valuers, they thought 4*l.* would be, in the second case, a fair rent." Did you take any evidence as to the cost of these improvements made by Costine?—Yes, we had evidence before us as to the value of the improvements.

10566. As to the cost of the improvements?—As to the value; I mean to say, valuers were produced who said the reclamation would have cost so much per acre, and there were so many acres of it. As a rule, it would be impossible to take evidence as to the cost, for these works by these small tenants are carried out by themselves and members of their family, and therefore the most favourable way to take it for them is to assume that it was done by hired labour, and what would the cost be, and we treat it as if it was done by hired labour.

10567. What was the evidence as to what the reclamation would have cost per acre?—I have no note of that now. That has passed from my recollection now. Out of 4,500 cases I could not tell the particular value. I could explain to the Committee if they wish the legal principles I applied to determine the case, but to give from memory what the evidence was in a particular case would be impossible.

10568. You have no recollection at all?—I have not.

Mr. *T. M. Healy.*

10569. Cannot the shorthand writer's notes be had in that case if we call for them?—You can have the shorthand writer's notes. In reference to Moore's case I think his valuer was not present, and he had a note of what the valuer's valuation was, which, as well as I recollect, stated how much was for reclamation and so forth, and by the goodwill of the solicitor for the landlord he was allowed to hand in that and we used that, and we read the valuation of Mr. Ryan, as well as I recollect.

10570. I see in the previous judgment of Mr. O'Brien he says he estimates the cost at 10*l.* per acre?—I cannot recollect.

10571. Will you kindly give any explanation as to the principle that you wish to give to the Committee?—I can state what is the principle on which I decided the case, but not what the facts are.

10572. The principle is pretty fully set forth in this judgment?—The principle seems to me to be very clear, one of the principles decided by Adams *v.* Dunseath, namely, that the last clause of the 4th section of the Act of 1870 is applicable to fixing rents under the Act of 1881. The last clause of the 4th section of the Act of 1870 is: "Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court, in awarding compensation to such tenant in respect of such improvements, shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantages of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made." A large majority of the Court of Appeal in Adams *v.* Dunseath says that the same principle must be adopted also in fixing rents, and therefore you must see when you go to exempt a tenant from rent on improvements whether those improvements are such as will come within that last clause. In this particular case, the tenant Moore in the second case for 50 years had enjoyed the holding at 6*d.* a year, and we came to the conclusion that that practically

Mr. *T. M. Healy*—continued.

tically satisfied any claim for compensation he would have had for the reclamation, and consequently that he was not exempted from rent on the same reclamation. In the first case there was a defect in proof, and we allowed him the benefit of that, and fixed the rent higher than we otherwise should.

Mr. *Dillon.*

10573. You allowed him the benefit of holding it at 6*d.* only?—It had been 6*d.* This is the thing I wish the Committee to understand. The reclamation having been made before the lease was granted, and the lands being described in the lease as "that part of the mountain lands of Slievegriene called Rusheen, enclosed and cultivated by Michael Costine," that is to say the tenant having already enclosed and reclaimed, got from the landlord a lease which lasted 50 years at 6*d.*, and we came to the conclusion that that compensated him for any expense he had gone to.

Mr. *T. M. Healy.*

10574. Will you allow me to refer you to the file in which it says that if the tenant did not continue to cultivate this as he always did it would go back to rushes and heath again?—Yes, I think you will find I mentioned that in my judgment. I say we have taken that into consideration in fixing, as we did, the rent at about 5*s.* an acre. His rent was 5*l.* 10*s.* in the second case, the court valuer's valuation was 4*l.* 5*s.*, and we fixed the rent at 4*l.*

10575. Now, we will assume, for the purpose of the argument, that Mr. Commissioner O'Brien's estimate of the cost on the reclamation is correct, 10*l.* an acre; that would be 200*l.* of reclamation done on the 20 acres?—My recollection is that that is largely in excess of what his own valuer said.

10576. Supposing it is 100*l.*, is it not a principle that you adopt that the tenant is to be allowed in his rent 5 per cent. on his outlay?—There is no such hard and fast rule.

10577. Is not that a general practice?—There is a practice that he is generally allowed 5 per cent.

10578. If he was allowed 5 per cent., or 4 per cent. on the 100*l.*, where does the compensation come in?—Fifty years at 6*d.*

10579. You know at the end of that 50 years you estimate the fair rent of the holding to be 4*l.* a year?—I take it during the whole of those years he was holding a piece of land which was worth 4*l.* 5*s.* an acre.

10580. For 6*d.*?—For 6*d.*

10581. Is that anything more than a fair return on the 100*l.*; is that full interest on the 100*l.* he allowed out in reclaiming the lands?—I am not admitting at all in any way that 100*l.* was the sum.

10582. I mean for the sake of argument; first, we want to get at the principle on which that judgment was based; supposing he did lay out 100*l.*, would you count the holding of a piece of land for 6*d.*, worth now 4*l.* a year, compensation and repayment to a tenant for the outlay of 100*l.* 50 years ago?—I cannot express a hypothetical opinion, but I can only say that on this

Mr. *T. M. Healy*—continued.

evidence we came to the conclusion that he had been amply paid by his enjoyment at the 6*d.* rent for any amount he had expended.

10583. Here is the file: "The character of the holding is such that it requires a continuous expenditure in labour and manure to prevent it reverting to its natural state of heath and furze"?—That is so, and we took that into consideration.

Mr. *Dillon.*

10584. This is such an enormously important case, as affecting an immense district of Ireland, that we ought to have the evidence?—You can have the evidence if you like; all I can explain to you is, that is the principle on which I acted in the case, namely, that the enjoyment for 50 years at 6*d.* a year was ample compensation for the expenditure, and whether that decision was right or wrong, there it is.

10585. We cannot know what the law as laid down in that judgment was until we know what the question was, because it all turns upon that?—You can know that we acted upon this clause of the 4th section that I have mentioned, and whether our decision was right or wrong, it has passed from us now.

10586. It has not passed from the House of Commons?—This is what I want to make clear; I apprehend it is not competent for the Committee of the House of Commons to investigate into the propriety of any judicial decision.

Chairman.

10587. It is not quite that; does it not go further; it is not competent for us to criticise the propriety of any decision at which you thought proper to arrive, but you must understand the Committee have a perfect right to ask you for every detail of every judgment that you have given, and for every principle that you have applied in those judgments, because it is precisely the principles upon which the Land Acts have been administered into which we are appointed to inquire?—The principle I have stated clearly, namely, that on the particular facts of that case, facts which I cannot pretend to recollect, two of the members of the Court came to the conclusion that the enjoyment of this holding at 6*d.* a year for 50 years amounted to compensation. I cannot state any further than that; the Committee can have the evidence in the case, and I cannot say anything more about it.

10588. I only thought it proper to make that remark, because the position you took in the observation you just made was not one, I think, which the Committee can admit; that this Committee is not competent to inquire into your judgments; we are not competent, assuredly, to say that your judgment was right or wrong?—Understand what I mean by that is, that I do not think the Committee, in the present investigation before them, can go into the consideration as to whether the particular case was rightly or wrongly decided.

10589. Nobody contends that we have any right to do anything of the sort, but we have a

Chairman—continued.

right to do what I think Mr. Dillon was doing, to probe every decision you have made to the bottom?—The Committee will have the facts.

Mr. *Dillon.*

10590. That is all we want to do; I wanted to endeavour to arrive at some clear idea of what principle guided you in determining what was fair compensation for improvements; it is a matter of vital importance, as you will see, to reclamation tenants?—All I can say is that in that particular case we came to the conclusion that whatever the value of the reclamation was, which I cannot charge my memory with, it was satisfied by the enjoyment during that 50 years.

Chairman.

10591. We shall be able to have the shorthand notes of this case before Monday?—Oh yes, you can have them at once.

Mr. *Sexton.*

10592. We are directed by the House to inquire into and report upon the principles and practice of the Irish Land Commissioners and County Court judges, and I suppose you will agree that we must not only discover your principle, but also what the effect of your principle was in any particular judgment?—Yes, you understand clearly what I mean as to any individual case; to ascertain whether that was rightly or wrongly decided.

Mr. *Dillon.*

10593. In explanation of my question I may point out that there was a great difference between the members of the Appeal Court on the principle at stake, because Mr. Commissioner O'Brien said it seemed to him that this doctrine of compensation by enjoyment could not apply unless concurrent with the enjoyment there had been a benefit received by the tenant in the way of profit on his outlay. All I wanted to ascertain was what was the principle?—Mr. Commissioner O'Brien was of opinion that enjoyment for 500 years at 6*d.* a year would not have been any compensation.

10594. That entirely depends on the amount of the outlay of the tenant?—That was his view; and at the end of my judgment I said the logical view would have been to restore the 6*d.*, and not, as he did, put an intermediate rent.

10595. On the question of reclamation there is a difference, is there not, between the presumption in favour of the tenant of reclaimed lands and on other improvements. Will you kindly, for the guidance of the Committee, lay down what is the presumption in favour of a tenant?—I do not think there is any difference in the law that I can recollect at the moment as to the presumption given by the statute as to reclaimed land and any other improvements.

10596. I thought there was a difference of presumption too?—The operative section as to presumption is the fifth section of the Land Act of 1870. Perhaps what you mean is this: that in the case of drainage and fences made before the passing of the Act the claim is limited to 20 years.

Mr. *Sexton.*

10597. A tenant cannot claim for any improvements made before 1870, except buildings and reclamation?—That is so. That is to say, now, at the present moment, because the 20 years have expired.

10598. The presumption is at first sight for anything done since 1870?—Yes.

10599. Before 1870 it is qualified, and before 1850 there is no presumption?—There is none; that is what Mr. Dillon meant. There was originally. Now the 20 years having expired since 1870, of course there is none.

Mr. *Dillon.*

10600. I want to ask you how the Court deals with that large class of improvements which partake of the nature of reclamation, but are done upon land which, before they were executed, was already in cultivation?—If that is so, as a rule that is not treated as reclamation proper; but, at the same time, if land has been permanently improved, credit may be given for it if it is not barred by any length of time. Reclamation is usually supposed to be the bringing of waste land into cultivation.

10601. That is the definition of reclamation?—That is the definition of reclamation.

10602. A man who removes an immense quantity of rocks and stones from a field which had previously been in use, his work is not counted as a reclamation?—That is reclamation; removal of rocks and stones may often be in the nature of reclamation.

10603. Often, and often not?—Often it is not. Scattered stones may not be; that is not counted as reclamation.

10604. It may not be reclamation?—In each particular case, whether it is reclaimed work or not, the land is worth more than it was before.

10605. Could you give the Committee a list, or a statement, of the cases, I mean under this classified statement of the cases, in which has been held that new tenancies have been created, and tenants have been excluded from the Court by the creation of new tenancies since the passing of the Act of 1881?—It is quite impossible.

10606. That new tenancies have been created since 1882?—We could not make any return of that. We could merely say that tenants have been excluded for not being present tenants. That may be for several reasons.

10607. What I want to know is if you can give us a statement of the reasons?—In which a future tenancy would arise? There are various ways in which a future tenancy would arise which I think have been already pointed out. There are some cases, they have not been very numerous before me, in which lettings from year to year were made by a tenant for life, and then the tenant for life dies, and the rent was taken by the man succeeding in remainder. That would be one class of cases; another class of cases has been mentioned already, in which a man, having mortgaged his estate, afterwards makes a letting, and the mortgagee afterwards goes into possession and demands rent from the tenant in occupation. That in law is the creation of a new tenancy on the terms of the old, and is not a continuance of the old.

Mr. *Dillon*—continued.

old. Those are some examples. It would be very difficult to enumerate all the different cases in which a future tenancy arises. In reference to the question of a tenancy created by a tenant for life, unless the law was altered generally, quite irrespective of the Land Act, I do not see how any amendment of the Land Act could be passed as the law stands at present. If a tenant for life makes a letting from year to year (unless it was practically a case that never arises), unless he makes the letting with all the formalities necessary for a lease, binding under some Act of Parliament, such as the Settled Land Act, unless he makes it by deed (which he never does in the case of a yearly tenancy), that does not bind his successor; it is quite irrespective of whether it is a case that comes under the Land Act or not.

10608. I want to have an analysis made?—You cannot make an analysis, it would be perfectly impossible to say all the circumstances under which a future tenancy might arise.

10609. I mean of the circumstances under which it has arisen?—I cannot tell you, unless you ask the individual case. As far as I am concerned I do not remember any cases except these two I have mentioned, there may be other cases.

10610. A case has been brought under my notice which I will put to you to know whether this would be a case. A man paid a fine of 1,000*l.* for a lease in 1858 of a farm, and it was subsequently discovered that the persons who gave him that lease had no right to give the lease, and had no power to give the lease except at the best rent, and without any foregift. He was left in possession throughout the whole of the lease, not disturbed until it expired in the year 1887, and the rent being a high one he came forward this year and sought to have a fair rent fixed?—Yes, it was objected, naturally, that the lease was void and a tenancy from year to year was created; I think that would be decided in accordance with the law.

10611. Would not that be a case of great hardship?—It is a hardship that anybody should take under a bad title. The same thing applies quite irrespective of the land law. Any man who takes a lease from a limited owner in excess of the powers of that limited owner suffers. It is not a thing connected with the land law alone. If I took a house out there from a man who is only a tenant for life, and paid a fine of 1,000*l.*, and it turns out that he had no right to take the fine, then when he dies the 1,000*l.* is lost.

10612. In this case the lease had expired, and it was because of the technical creation of a new tenancy that the man was barred?—It was because the lease was void, and the person who came in was not bound by the lease, and by receiving rent created a tenancy from year to year.

10613. What I mean is, whether that does not seem to be a case of hardship that he should be barred from the ordinary incidents of a tenancy from year to year?—It would be a very hard thing to say that any tenant for life, who has only a limited power of leasing, should have power to make leases which are in excess of that power. For instance, if a tenant for life is

Mr. *Dillon*—continued.

only allowed to lease for a certain number of years at the best rent, it would be a great change in the law to say that he might lease for a different number of years and not at the best rent. That may be a hardship.

10614. That is not my point exactly. What I want to put to you is whether this is not a failure of the law, inasmuch as the tenant was in continuous occupation of that holding, unbroken occupation, for a great many years, long anterior to the Land Act; and that owing to the technical failure with regard to the lease and the creation of his new tenancy, he is deprived of the benefit of the Land Act?—I do not look upon it as a technical failure, I look upon it as a most substantial thing. He took a lease from a man who was not empowered to give the lease, and his lease came to an end at the death of that man, and somebody else succeeded and took rent. It is a very unfortunate thing for the individual, but it often happens from not investigating the title of the man who made the lease. One would imagine if a man were paying a substantial fine he would ascertain whether the man who was granting the lease was capable of making it.

Mr. *Clancy*.

10615. In the Villiers Stuart case Mr. Dillon read your judgment, in which the reasons for your decision are very fully given. Is there anything in that judgment about the occupation interest of the tenant?—No, it was not touched on in any way.

10616. You did not take it into account?—We took it into account, the same as we always take it into account, because the valuation given to us was a valuation of the land as it stands now in the hands of the tenant, but not specifically. I have mentioned already to the Committee that the net question has never been raised directly.

10617. You could not give us any idea as to what effect you give to your judgment in regard to the occupation right?—I could not give you anything except what I have said already to-day. I would not like myself to say what the limits of it would be, or the limits of its value.

10618. Yet the occupation right, according to the Act of 1870, is a very important one. Under the Act of 1870 the tenant in that case could have got for disturbance of his occupation right seven years' rent?—Yes.

10619. Is it really the practice that you never take into account that fact?—You do not take strictly into account anything about the occupation at all, except you assume that the valuation that has been put upon it is a valuation of the lands as they stand in the hands of the tenant.

10620. I want to ask you a question or two about costs. What is the rule as to costs in proceedings under the Land Act of 1881?—In the Court of the Sub-Commission each party bears his own costs.

10621. That was not the case in proceedings under the Act of 1870?—No, quite a different kind of question arises there.

10622. Whatever the question was in that case, the costs were generally allowed to the tenant?

Mr. *Clancy*—continued.

tenant?—If the tenant succeeded. I mean to say he got the costs not exceeding 10*l.*, or something of that sort.

10623. If you look at Cherry, at page 486, it is stated there that the costs are usually allowed to the tenant, except where very unreasonable claims are made?—If he establishes his claim, unless it turns out to be a frivolous claim, he will get his costs.

10624. Under the Act of 1881 he is allowed to bear his own costs, even though he succeeds?—Yes; because it is a kind of fixing of rent by the State, not by the wish of the landlord.

10625. Will you look at page 585 of Cherry. There the rules as to costs upon rehearings in your court are given?—Yes.

10626. When the landlord appeals the costs are given according, apparently, to the result of the case; that is to say, if the tenant loses he pays, and if the landlord loses he pays?—In that case, if the landlord appeals, and the judicial rent is affirmed or reduced, the tenant gets his costs.

10627. I am taking the whole class of contingencies, and I say that when the landlord appeals it appears to be the case that the costs follow the result?—If the judicial rent is affirmed.

10628. Generally speaking?—It does not necessarily follow. Of course, if the judicial rent is increased each party abides his own costs, unless the original rent is restored.

10629. Look at the list of these cases; if the former rent be restored the tenant pays the costs?—That is the only event in which the tenant pays the costs.

10630. Look at the last of the second series of cases where a tenant appeals, if the judicial rent be reduced each party abides his own costs; there the tenant, although he wins the case, has to pay his own costs?—It exactly corresponds with the former case. If the judicial rent is increased each party abides his own costs unless the rent is restored. You will see, with the exception of one, it corresponds with something else in the other. In the one case if the judicial rent is affirmed the tenant is entitled to costs; in the second, if the judicial rent is affirmed the landlord is entitled to costs; in the first case if the judicial rent is reduced the tenant is entitled to costs, and in the second case if the judicial rent is increased the landlord is entitled to costs; if there is an alteration neither party gets any costs, except in the solitary instance where the Court restores the old rent.

10631. I do not see anything to correspond exactly with the last of the cases put?—There could not be anything to correspond, because it is a case in which the landlord has reinstated the old rent that existed before any proceedings were taken; nothing would correspond with that in the case of tenants.

10632. There is a case, if the judicial rent be reduced, when the tenant appeals; that is a case in which the tenant wins the case, and nevertheless he has to pay his own costs?—He abides his own costs when the judicial rent is reduced.

10633. I want to ask you a question or two as to the procedure in cases in which the parties have sent an originating notice and joint application to fix a fair rent?—A joint application by landlord and tenant.

Mr. *Clancy*—continued.

10634. Yes; are there many such cases?—The only cases where they arise are where landlord and tenant agree to have a rent fixed by two of our court valuers or a court valuer. That is the only case which arises, and we have not a large number of those. There are about 1,300; there is no object in the parties joining in other cases, because the tenant can proceed without requiring the landlord to be a party.

10635. Am I right in saying that in these cases formerly the question of the rent was referred to valuers who were unconnected with your Commission, to special valuers?—I do not know how that is, I do not know of any such practice.

10636. To whom are they referred now?—Now, whenever the parties agree we send two down, two court valuers, or two Sub-Commissioners, and then fix a rent on their report, but there are very few such cases.

10637. Is there any hearing in court?—No hearing in court at all.

10638. Does it ever come before the Court?—The only way in which it comes before us is in this way: the tenant sometimes shows cause by our procedure against the rent which was fixed. The rent is only fixed conditionally in the first instance, and if the tenant shows, or the landlord shows, as the case may be, that the valuers have erred in point of law, and have not taken certain things into consideration which they ought to take into consideration, for instance, have treated the improvements as landlord's when they ought to be tenant's, or *vice versâ*, then we send it back to them to revise the rent on the true basis, whatever it may be.

10639. Can you give us any idea as to the proportion of cases in which costs have been disallowed?—I could not tell. The total number of rents that have been fixed in this way is 1,391.

10640. Under that system?—Yes. One of the objections to the system is that there is no appeal except, as I say, on a question of law. On the question of value there is no appeal.

10641. Now, as to the custom of transfer of cases from the County Court to the Land Commission, I believe I am right in saying that either party has a right to transfer the proceedings?—He has a right to transfer the proceedings unless some very strong cause for retaining it in the County Court is shown.

10642. Unless a transfer should be shown to be unjust and unreasonable?—As a rule it is transferred to the Land Commission as a matter of course, unless either party is damnified by that. Formerly the chief ground of objection to the transfer was, that it would delay the hearing of the case; a speedy hearing could be got in the County Court. Now that the arrears of work in the Sub-Commission have been swept off, that objection no longer exists in practice. You can have the case heard as rapidly before a Sub-Commission as before the County Court.

10643. Are you able to say whether the applications to the County Courts to fix rents are uniform all over the counties of Ireland, or are they made specially in certain counties?—I really

Mr. *Clancy*—continued.

really cannot say. There are some counties in which there are more cases, as undoubtedly you will see by the returns. In some counties there are a great many more applications than in others. I cannot profess to assist the Committee as to what the reason for that may be.

10644. Who pays the expense of these cases of transfer?—It is a nominal expense.

10645. There must be a motion in Court to transfer the case?—There must be a notice served, and then, if there is no cause shown, as a matter of course the order is made.

10646. Could you tell us of the cases commenced in the County Courts, how many have been transferred to the Land Commission?—I suppose that appears in the reports. From the 22nd of August 1881 to the 31st of March in the present year there have been 9,034 yearly tenancy cases transferred from the County Court to the Land Commission, and 1,340 leasehold cases.

10647. When a landlord applies to have a case transferred from the County Court to the Land Commission, what is the ground generally alleged for the application?—I do not think there is any special ground alleged at all in our forms. Mr. Justice O'Hagan, when he settled the practice originally, came to the conclusion that it was a matter of right to have a transfer unless some cause is shown to the contrary. Instead of requiring any cause to be shown for the transfer we merely require a cause to be shown against the transfer.

10648. Therefore, the landlord has to make no case whatever when he wants a transfer from the County Court to the Land Commission?—In the first instance he makes no case at all. He merely says that he applies to have a transfer, and then the tenant states any reason he can.

10649. The burden of proving that the Court to which the tenant has chosen to resort is the best one is thrown upon him?—The view that was taken on the terms of the Act by Mr. Justice O'Hagan was, that it was a matter of right to have the transfer, unless there was some special reason to the contrary. The notice is in this form: "I apply to the Land Commission to transfer the proceedings in this case from the Civil Bill Court of the County of," so and so, "to the Land Commission."

10650. I am right in saying that the burden of showing that that is an application which ought not to be granted is thrown upon the tenant?—That is an application which will be granted, unless there is some special reason to the contrary.

10651. The tenant has to show the reason?—The tenant has to show the reason. There are applications sometimes made by landlords to transfer from the Civil Bill Court.

10652. Many?—No, not many, because it would be practically only in the event of the landlord instituting a proceeding in the County Court. Under certain circumstances, as you are aware, the landlord can serve an originating notice if he demands an increased rent.

10653. What is the method of listing cases before the Sub-Commissioners at present; how is it done; is it by poor law unions?—The mode of listing the cases before the Sub-Commission is a matter in charge of Mr. Fitz-Gerald, upon which, I think, he gave evidence before the Committee; I have absolutely nothing to do with it, that is his department. The general idea of course is, they select whatever part of the county there are most cases to be heard in; they group them together according to the electoral divisions, and they select the most suitable places to hear them, and then send them down to the Sub-Commission.

10654. I just want to ask one question more about what you would do in cases in which money is borrowed for the purposes of drainage or improvement; take the case in which a landlord under the Land Improvement Acts borrows a certain sum of money and expends it on the holding, and the landlord adds to the rent what may be equivalent to, or greater than what he pays by way of annual charge to the Board of Works?—The way we act in the case is this: sometimes that goes on for a long number of years in which the tenant pays all the instalments to the Board of Works, that instalment is repayable on the principle in the original Act of 6*l.* for every 100*l.* that were borrowed, so that if a tenant pays 6*l.* a year, that is in respect of a capital expenditure of 100*l.*, and that, as well as I can recollect, for a term of 21 years. If that has gone on, we will say for half the term for which the instalment is payable, we treat it that the tenant has thereby acquired one-half of the improvement, and then in fixing the rent we impose a liability on the landlord to pay the instalment for the future, and treat one-half of the improvement as acquired by the tenant, and the other half as remaining the landlord's. If, on the other hand, in a possible case, the whole term had expired, and the tenant had gone on during the whole term paying the instalment, we treat the improvement as entirely the tenant's. If it was an intermediate case, we divide it between them.

10655. What exactly do you do when you say you treat it as the tenant's?—Let us fix the idea. We will take the case of it being expended on buildings, and we will say during the entire term for which the instalment is payable to the Board of Works the tenant has in fact paid to the landlord the instalment by way of additional rent. We treat those buildings as now the tenant's buildings, and exempt him from any rent in respect of them. If, on the other hand, he had only paid the instalment for half the period, we treat the landlord as having still some interest in the building, and for the remaining half of the term he would have to pay the instalment.

10656. Is that a case in which you give effect to the principle laid down in Adams *v.* Dunseath as to the doctrine of enjoyment?—I do not think the principle of Adams *v.* Dunseath has anything to do with it at all. If the building, or whatever the improvement is, has been paid for by the tenant, we treat it as a tenant's improvement. If it has been partially paid by the tenant we treat it to that extent as the tenant's improvement, and if the instalment still remains

Mr. *Clancy*—continued.

payable, the liability is imposed by law on the landlord, and no longer upon the tenant.

10657. That is not a case to which you apply the doctrine of enjoyment due?—That is one of the numerous cases that come before us. The other case I mentioned already is if the landlord has been paying an instalment, but has got the Board of Works to assess the additional rent on the tenant, we simply disregard that additional rent altogether, and fix what is a fair rent for the building as it stands.

Monday, 23rd July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Mr. Justice BEWLEY, again called in; and further Examined.

Mr. *Sexton.*

10658. I UNDERSTOOD you to say that 87 appeals had been taken up from you?—Yes, more than 87 had been taken, but 87 had been actually heard by the Court of Appeal. I mentioned that there were 17 additional appeals which had been taken, but had been settled or withdrawn.

10659. That was higher than the average for the whole period, was it not?—I do not know. I cannot tell, but one of the reasons why the average may be higher is in consequence of new appeals under the Act of 1887, and the Redemption of Rent Act.

10660. The number for the whole period was about 200?—Lord Justice FitzGibbon has stated accurately what the number is.

10661. I think you said that 28, or one-third, of those decisions were reversed?—Yes.

10662. And of those, 19 had been in favour of the tenant?—Yes, I think that was the exact number.

10663. Did these include important cases?—I think I can tell you what they were.

10664. I would wish to avoid all reference to particular cases; I ask you the general question, did these 19 include important cases?—The 19 included some very important cases; I could mention some of them. Some of them involved very important questions of principle.

10665. Could you furnish a memoranda showing the effect of your decision and the effect of the reversal?—I think it would be impossible to do that.

10666. Could you give the subject of the case?—I could give the subject of the case, but it would be quite impossible to say in how many cases that had influenced a subsequent decision.

10667. I do not ask you to give that, but if you could state in any terms, however general, the effect of your judgment, and the point reversed or the matter reversed, it would be of great use to the Committee?—I could prepare a memoranda showing the subject, but I could not say in any way how many cases had been affected by that decision afterwards.

Mr. *Sexton*—continued.

10668. Of the 60 appeals in which your judgment was affirmed, can you remember how many were in favour of the landlord?—Oh, yes.

10669. How many of them?—I could not tell you without referring.

10670. I do not wish you to take the trouble of an enumeration?—I could make out a list, but I could not tell off-hand how many.

10671. You have no idea?—Except in a very general way, which might mislead the Committee. I have the registrar's list here of the cases heard during the time, showing the number that were reversed, and the number that were affirmed, and I could see easily by that which were in favour of the landlord and which were in favour of the tenant.

10672. Has that been handed in?—I think that was handed in by Lord Justice FitzGibbon, or a larger list; I only got the list from the registrar during my own time, of course. I do not know whether it would be of any assistance to the Committee, but I have noted, in this list, the cases that have been reported in any of the reports. I think there are 40 of them that have been reported in some shape or form.

10673. Have you handed in any list showing the subject of the whole number of the appeals, distinguishing between the appeals in which your judgment was affirmed and the appeals in which your judgment was reversed?—I have made no such list.

10674. I wish you would do so?—I will.

10675. What is the tenure of office of the Sub-Commissioners?—The tenure of office of the Sub-Commissioners is the same tenure as that of any civil servant of the Crown; that is, I apprehend, "during good behaviour."

10676. The legal Sub-Commissioner, I think, is somewhat different?—I think not.

10677. I think he is dealt with as a county court judge?—No; he has precisely the same tenure as that of a civil servant, under the Land Purchase Act of 1891.

10678. Are they appointed upon your recommendation?

Mr. *Sexton*—continued.

mendation?—Oh, no. All those that we have now were in office before the passing of the Act of 1891. They were then holding temporary appointments. After the Act of 1891, such of them as were considered best suited were made permanent officers by the Executive after receiving a report from the Land Commissioners. We sent in a report, and in the list of lay Commissioners we included a great many more than there were vacancies for and than the Executive chose.

10679. In case of cause arising for the removal of a Sub-Commissioner, would the Land Commission intervene?—We have nothing to do with removals.

10680. Is that the function of the Executive purely?—Yes, that is the Executive; I speak from recollection. My recollection is that it is the Executive who appoint and the Executive who remove.

10681. But you may remove a Sub-Commissioner from place to place?—Yes, if it is necessary for the purpose of business, or for convenience.

10682. Whether he is legal or lay?—Whether he is legal or lay, naturally.

10683. And if he is a lay Commissioner you may remove him from judicial functions and make him a valuer?—Yes, we may; certainly. They are all, in fact, Assistant Commissioners; there is no distinction between them in their position, but some are employed in judicial functions as members of a Sub-Commission, and others are employed for valuing.

10684. With regard to any lay member of a Commission, you and your colleagues have the power at any time to remove him from the exercise of any judicial function, and to make him simply a valuer?—Simply a valuer, yes; make him a court valuer, as, for instance, lately owing to the diminution of business, and the death of Mr. Trench, one of the legal Sub-Commissioners, it was necessary to take off a number of Sub-Commissioners, and they were made valuers.

10685. Why should not you employ them in purchase cases?—Some of them are employed in purchase, and some of them are employed in valuing for appeals.

10686. And in any other part of your work?—Yes, they are all interchangeable in theory. There are three or four kept permanently on purchase work, and are never sent down to any other work.

10687. I understood you to say that the Land Commission have not thought it proper to instruct the Sub-Commissioners as to the discharge of their duties, lest it might interfere with their judicial independence?—I wish to convey to the Committee that we do not think we have any right to instruct them on principles of valuation. As to their general conduct, of course, we can instruct them as to the way in which they are to conduct their business, matters of procedure and the like, and other matters; but we conceive that we have no right to lay down any rules for valuation. That was the opinion of Mr. Justice O'Hagan so far back as 1882, and that has been acted on ever since.

10688. But the judicial independence of a man, who can be removed, as a matter of departmental convenience any day, and put to discharge entirely non-judicial functions, is limited, of course?—No Sub-Commissioner has ever been removed from a Sub-Commission and made a valuer, except for the reason that there was no work for him to do.

10689. I am not imputing motives, I am merely suggesting to you that the liability to such removal limits the independence?—Yes; if the Land Commissioners should act improperly and have improper motives, of course it would be in their power to do so. If they choose to remove a man for some object of their own, not really connected with the administration of the Land Acts, it would be in their power to do so; but it would be a great dereliction of duty on their part.

10690. I did not proceed to any suggestion of motive?—Oh, no, no; I understand. You said that that was possible, I understand.

10691. I was considering the effect of the system upon the mind of the Sub-Commissioner; do you think that an instruction to him as to any part of his duty would limit his independence more than his liability to be removed?—There are instructions sent to the Sub-Commissioners as to the conduct of business; I think there are printed instructions.

10692. As to the conduct of business?—As to the conduct of business; as to the way they are to conduct their business; small matters, I mean to say, warnings to them, for instance, not to accept hospitality in the neighbourhood in which they are acting, nor to give hospitality to anybody (that, I think, is a very right suggestion), and not, of course, to act as Sub-Commissioners on any estate with which they have been connected.

10693. Could you furnish to the Committee a copy of any instructions issued at any time to any Sub-Commissioner or other officer in respect of the discharge of his duty?—I will have those sent to the Committee.

10694. Now it is a matter of duty on the part of the Sub-Commissioners to fill up the pink report?—Yes.

10695. The pink report does convey very elaborate instructions?—It does. It is much more elaborate than it was originally.

10696. They are obliged to classify the lands?—Yes.

10697. They are obliged to state the annual value of the buildings if they are the landlord's?—Yes.

10698. And to say what has been added for proximity, or deducted for remote position, and so forth?—Yes, all those have to be stated.

10699. Many particulars?—A great many particulars. That form (the Committee, I think, have been told already) was settled by a committee of Sub-Commissioners after considerable deliberation.

10700. And sanctioned by the Land Commission?—And approved by the Land Commission of course, with the concurrence of the Land Commission.

10701. It amounts to a direction as to the mode of valuation to be pursued?—It amounts to a direction

Mr. *Sexton*—continued.

direction to give certain particulars, I cannot say anything more than that.

10702. And the classification of the lands (and the area of the different classes of land) indicate an acreable valuation?—Yes, it indicates at any rate materials for an acreable valuation.

10703. And the requisition as to carrying power indicates an acreable valuation founded upon produce?—The carrying power indicates produce in case of pasture lands; it is a convenient way to indicate what the carrying power is.

10704. But that the acreable valuation is to be guided by the produce?—The acreable valuation is to be guided by the produce in every case, or, as I said, the particulars form the materials for an acreable valuation.

10705. This and other forms have been in use for many years; of course I do not hold you responsible for anything that happened before your time, but you say that the Sub-Commissioners were never instructed to state on the pink report the most important matter of all, and that is the allowance made for the occupation right of the tenant?—No, there was never any instruction as to that; nor, as I have mentioned already to the Committee, any question raised in reference to it.

10706. It seems unaccountable that the Commissioners should be instructed on points comparatively minute, and that instructions upon the main point (for it is the main point) should be omitted?—I can answer that in this way: The Sub-Commissioners are not instructed as to what extent they are to take prices into consideration, or various matters of that kind; nor are they instructed that they are to take in the question of the tenant being in occupation.

10707. Lord Justice FitzGibbon, in Adams *v.* Dunseath, was of opinion that the fixing of fair rent is eminently a matter for judicial discretion?—Yes, to a certain extent, subject to certain legal principles.

10708. And he said very plainly that even though you delegated the powers of hearing to Sub-Commissioners, yet the responsibility was fixed by the law upon you?—I am not aware that he said that. Of course, if he did say it he said it; I am not aware of the passage.

10709. Would it not have been a very natural and very obvious step to ask the Sub-Commissioners to state upon this pink report how much they had allowed for the occupation right of the tenant, or how much lower they fixed the rent than if he was a stranger?—I can only say, as I said before, that no question has ever been raised about it by anybody; and as far as I can see, Adams *v.* Dunseath left it an open question as to whether that occupation interest is legally recognisable or not.

10710. Well, I doubt that. What Lord Justice Fitzgibbon said was, that he would not decide the question (which might afterwards arise) whether the tenant had an interest in addition to his statutory tenure?—And his right to improvements.

10711. Certainly; the Lord Justice admitted the right due to the statutory tenure: that is, the occupation right?—Of course, the statutory tenancy is quite a distinct thing from the occupation right, as I say.

Mr. *Sexton*—continued.

10712. The statutory tenancy is the occupation right in its highest form?—I think it is quite a distinct thing; I think one is a possessory right, the other a right of property, so to speak; the one is a right belonging to the estate only; the other a right more in the nature of goodwill.

10713. The occupation right had a certain value even before the Act of 1870?—It had.

10714. And the Act of 1870 increased its value?—It did.

10715. The Act of 1881 still further increased its value?—The Act of 1881, I think, left it very much the same; it increased the value, if you will allow me to explain, of the tenant's estate in the land, but whether it increased the goodwill in addition to the tenant's estate I really do not know; I have never considered the question sufficiently to express a clear opinion.

10716. That is to say, you will not commit yourself to saying that an occupation right in perpetuity is worth more, or ought to be counted more, in fixing a rent than an occupation right terminable by eviction?—The occupation right in perpetuity, of course, would be more valuable.

10717. I thought so; and I come back to this, that the statutory tenure which gives a tenant a perpetual occupation is an occupation right of the highest value?—It gives him the right of continuing there for ever if he observes the statutory conditions.

10718. You were a leader at the Bar for many years before you became a judge?—I had a great deal of practice at the Bar.

10719. And in regard to the Land Acts?—I had a great deal of practice under the Land Acts both before the Land Commission, the Court of Appeal, and occasionally before Sub-Commissioners.

10720. And I suppose, from your position at the Bar, that you usually acted for the landlord?—On the contrary, I was, I am happy to say, employed frequently by tenants, and in some of the largest cases that ever came before the Land Commission or the Court of Appeal for tenants. I am happy to say that at the Bar I was not employed by any particular class, but by anybody and everybody who thought my services would be of any value to them.

10721. But I should suppose, from your position at the Bar, which was in the first rank, that the landlord would be the person able mostly to employ you?—I do not know; I had a great many cases for landlords and not so many cases for tenants.

10722. That is just as I would assume?—Yes.

10723. Now in the course of your practice at the Bar upon the Land Acts, whether you appeared for the landlord or the tenant, is it possible that the question never arose as to whether the valuations made in Court took fair account of the occupation right of the tenant?—Never; never to my knowledge was the question raised, never. Perhaps that may be against the existence of the occupation interest, but I do not want to give up my belief in it still.

10724. Had you never, as counsel for the landlord, occasion to contest such a claim?—Never.

10725. Or

Mr. *Sexton*—continued.

10725. Or as counsel for the tenant to advance it?—Never.

10726. Have you now fully read the evidence?—I have fully read the evidence, I think, but unfortunately some of my copies of the evidence went astray in the committee-room here, and I was left without them. I have read them all carefully; at the same time I am not in a position to stand a cross-examination on anybody else's evidence.

10727. Oh, no; in fact I do not regard my examination as cross-examining you at all; I am asking you as to facts which you are quite willing to testify to?—You understand, I have not such a minute knowledge of the evidence given by other witnesses as might enable me to criticise it, even if I were disposed to do so (which I most certainly am not).

10728. Have you read Mr. Bailey's evidence?—I have.

10729. Have you read a paper he handed in showing the exclusions and restrictions?—I have.

10730. Does that paper give an accurate view of the law?—I think the paper was perfectly accurate. The only commentary I would put upon it at all is this; that a great many cases are stated which in reality are only particular cases on one general principle; I mean to say, for instance, that on the one hand he mentions, and very properly, a number of cases held to be future tenancies, but, on the other hand, that is not to be considered exhaustive; there may be other cases in which future tenancies would arise that would come under one general head.

10731. If there be anything to be said about it it is that there is under-statement rather than over-statement?—It is not exactly that I mean to say they are not at all to be treated as cases to be excluded; but there are a number of particular instances of various classes, all of which seem to me to be exclusions directly under the language of the Act of Parliament.

10732. Derived from the Act?—Yes.

10733. Any of which might occur. You have read his evidence?—I have.

10734. So far as it gave an account of the development of the law by decisions, do you see any reason to question the accuracy of his statements?—I respectfully ask leave not to answer a general question of that nature, for I really could not say that I would necessarily concur with every individual statement; at the same time he may be perfectly right in some of his views in which I would not concur. Mr. Bailey, I am happy to be able to say, is a very accomplished lawyer, and I have the greatest confidence in his decisions on questions of law.

10735. The last case I have seen reported is one in which a decision of Mr. Bailey, reversed by the Land Commission, was affirmed by the Court of Appeal?—There have been several such; but I ask leave not to express so general an opinion on his evidence, or the evidence of any other witness.

10736. Does any question of importance occur to you, as a lawyer and as a judge, that you think it would be important for the Committee to have modified, as regards the view expressed by Mr. Bailey?—I could not say that. I have not such an intimate knowledge of his statements as would enable me to say. I mentioned one point the last day I was here: I think he assented sometimes to some questions that were put to him that I am perfectly certain on reflection he would not have expressed so confident an opinion upon. Possibly I may do the same myself; any witness is liable to do that.

10737. But where he set himself to express the law in terms, you think he was accurate?—It would be a very inconvenient thing that I should reply to that. Mr. Bailey does not require any character from me; he is well known.

10738. Possibly he does not. Of course you have observed that more than one-third of the agricultural tenants of Ireland are not accounted for in the records of the Land Court, regarding fair rents?—Yes. The primary difficulty it seems to me is to ascertain how many tenants there are in Ireland who would come within the Act. There is great difficulty in ascertaining that.

10739. As I make out the figures there are 300,000 rents fixed, and there are about 486,000 agricultural tenants according to "Thom's Directory" which is a work of authority. Now I suppose we may divide the balance, 180,000, into present tenants who have the right to come in, presents tenants who have not the right to come in, and future tenants?—Oh, there are a great many others, I suppose; a document that has been submitted to the Committee here is this Parliamentary Paper, Session 1891, No. 260, a copy of a Return laid before Parliament showing the number of the holdings in Ireland, and the total number given there was 552,349; but there was a note appended to that: "The number of holdings is taken from the agricultural statistics for 1889, but includes many thousands of holdings which could not come under the Act when in operation, *e.g.*, those already dealt with under the Ashbourne and former Purchase Acts, lands occupied as villa residences, lands in the occupation of landlords, demesnes, home farms, holdings the purchase of which would require a greater advance than 3,000*l.*, holdings in occupation held under perpetuities at nominal rents." What I want to call the attention of the Committee to is that that enumeration, at any rate, includes, certainly to my knowledge, 24,000 holdings that have been purchased under the Land Purchase Acts and the Church Temporalities Acts, and in addition to that it includes labourers' holdings; it includes all the villa residences round the cities and towns in Ireland, and includes a large number of non-agricultural holdings.

10740. The figure I gave you was 486,000 agricultural holdings?—You will understand me when I say that I do not know on what basis that figure is arrived at; I think there is a difficulty in ascertaining the number of agricultural holdings.

10741. You have no means of knowing how many of the present tenants who have the right to come in, but have not come in, have been deterred by one cause or another; arrears; fear of losing turbary, or fear of the cost of an appeal?—I have no means of knowing at all. Like a great many other persons, I have occasionally inquired

Mr. *Sexton*—continued.

inquired why a tenant from year to year only came in within the last few years, and generally the answer was given that he was getting an abatement, either that or that he was in arrear; but I could form absolutely no idea, not even a guess, as to how many tenants are kept out by reason of that.

10742. As to the present tenants who are kept out by the law, you have, in the course of your evidence suggested that considerable modifications might very well be made?—I gave you the return of the numbers that had been actually excluded by decision; whether there are any outside that of course I do not know.

10743. Of course you realise that that affords no measure of the number who may not be excluded by the same causes, but who have not come in?—There may be others.

10744. There may be many others; for instance, I suppose each case of exclusion warned many others that they were in fact excluded?—If you ask my individual experience, that is not so; I have seen so many cases brought into Court where it appeared so perfectly hopeless to succeed that I do not think that people are deterred much by former decisions.

10745. You do not think that if a man saw a case which he knew to be on all fours with his own decided against the tenant, he would be kept out by it?—I can only say that I have seen a great many cases that seemed to me to be utterly hopeless cases brought into Court, notwithstanding that there were decisions which virtually ruled them.

10746. May I ask you whether, as a matter of judicial interpretation, interpreting a remedial Statute like that of the Act of 1881, which intended to prevent excessive rents, regard is had to the general object of the Statute primarily, or whether you would construe that Statute like any other upon words and phrases and clauses?—That Statute, as far as I understand your question, is to be interpreted along with all other Statutes of a similar character; not as any special Statute, but as a Statute to be construed, even if the Act had not said so, expressly along with the Land Act of 1870, and to be construed along with the Land Act of 1860.

10747. The chain of judicial decisions since 1881 has made apparent to the ordinary mind many causes of exclusion which were not so apparent at the time when the Act was passed?—As far as I can see, there is no judicial decision which has created any new ground of exclusion, but cases have arisen which, perhaps, persons did not contemplate at the time the Act passed, but which are, nevertheless, within the exclusions of the Act; and I take as an illustration that case of Moylan *v.* Finch, which has been referred to, the case of a letting made by a tenant for his own life. Well, that possibly was not contemplated at the time of the Act, but it seems to me that the decision in that case follows from the Act, although I myself personally did not think so, because I reversed the Sub-Commission in that case, and I thought the tenant might be included.

10748. Do you take it to have been the general intention of the Legislature that an Irish tenant cultivating land by agriculture or pasture

Mr. *Sexton*—continued.

for a living or for profit should have a fair rent of the same tenure?—I can see, of course, no intention of the Legislature, except what is expressed in the Act. It seems to me that the intention of the Legislature, as expressed in the Act, was that a tenant (that is, a person between whom and the landlord the relation of landlord and tenant existed) of a present tenancy (that is, that the tenancy should be a "present tenancy)," to which the Act applies (that is, not one of the excluded tenancies) should, if he was in occupation, subject to the qualification stated in the Act, be entitled to have a fair rent fixed, and more than that I do not see in the Statute. That seems to me to imply then that if he was not a tenant or if he was not in occupation, or if he was not a "present tenant," or if his holding was one of those excluded, it was not the intention of the Legislature that he should be within the Act.

10749. In the course of your evidence, in reply to questions with regard to sub-letting; with regard, I think, to non-agricultural holdings in some cases; with regard to town parks in some cases; demesne land also in some cases; and I think lettings for temporary convenience; I think you have suggested that the law might be usefully modified?—Well, my recommendation is not quite so extensive as you mention. What I said was this: that as to a certain class of sub-lettings, and as to a number of cases in which tenants are excluded in consequence of a portion of a holding not being within the Act, it might be well to amend the Act in that respect, because I say there really appears to me to be very great injustice in some cases of that kind.

10750. Also as to sub-letting?—Also as to sub-letting.

10751. For instance, where a landlord demised or let land to a tenant with the sub-letting on it, is it not hard that the tenant, because of that sub-letting, not created by him, should be excluded from a fair rent?—That is so, if the sub-letting is of a small character; but if the sub-letting is of a large character, the man would be simply a middleman; I mean to say, if the landlord let 600 acres, and 590 of them were in the occupation of sub-tenants, I certainly would not allow that man to go in and fix a fair rent.

10752. You would see no objection in principle to defining the ratio that must not be exceeded?—No; I think it would be a most convenient thing, although it is to a certain extent a rule-of-thumb; still, it would be better to define the ratio, and I would put on, not merely a ratio of acreage, but a ratio of acreage and value, not exceeding a certain amount in area and value.

10753. A double check?—Yes, a double check; because in certain cases a very small portion of the area might happen to be a very valuable portion of the holding and *vice versâ*.

15754. Is it fair, do you think, that demesne land demised for ever should always be demesne land?—Well, I asked on Friday not to be asked questions as to whether a thing was "fair" or not.

10755. Well, if you will not assist us we are in rather a difficulty?—I will answer it in one way. If the land which is demised away for ever is merely a farm, I think it is hardly fair to

Mr. *Sexton*—continued.

treat that as demesne land still; if the land granted for ever is granted as a demesne to be used as a portion of the park attached to a mansion house, I do not think there is any grievance in that; and that was the case of Spencer *v.* Tedcastle.

10756. As to a holding held to be non-agricultural or non-pastoral, do you think it reasonable that a man should be excluded from the fixing of a fair rent because a minute alien or foreign element, a bit of demesne land, or an old mill (a useless mill, perhaps), or the right to collect a few shillings of toll is contained in the holding, which would otherwise be agricultural or pastoral?—What I suggested in that case was that the portion which was non-agricultural in character or the portion which did not come within the Act should be surrendered, and the rent fixed on the residue. I think, if I may give an illustration, it sometimes operates very harshly. We had a case near Baltinglass, heard some time ago, of a farm of 50 acres and upwards, a mile and a-half from the town; but the lease included a very small plot of ground in the town of only 33 perches, upon which was a house which had been sub-let after the passing of the Act of 1887; the whole holding was excluded in consequence.

10757. Is it a reasonable state of the law that, perhaps for many years to come, the question whether a fair rent should be fixed upon land called a town park should depend upon the circumstance of whether or not the man who held it lived in a place called a town on the 22nd August 1881?—Well, I do not really like to express my opinion as to whether the Legislature is "reasonable" or not in the Acts that it passes. I assume that it is, and I carry out the law, whatever it may be. Undoubtedly that is the law; that is the critical period for determining whether the holding is a town park or not.

10758. Looking to the increasing importance of pasture in Ireland, it would seem that the limits existing in regard to fair rent on pasture farms may operate harshly, and with increasing harshness in the future?—I made a suggestion the other day; of course these suggestions are all my own individual suggestions, which the Committee will understand do not bind any other member of the Land Commission; my suggestion was that the limit might be made a hundred pounds' valuation instead of fifty pounds' valuation.

10759. Lord Justice FitzGibbon rather astonished us by saying that a letting for temporary convenience, or for temporary necessity, excluded under the Act, might yet be a letting for lives or years, or lives and years?—It might be certainly for "lives," in several cases one can conceive that. There is a reported case (Finnerty *v.* Lord Cloncurry, I think that was the case he referred to) in which an old man was allowed to remain for his life in his holding, otherwise Lord Cloncurry undoubtedly would have taken up the land with other holdings round about, that was looked upon as a letting for temporary convenience.

10760. It is a surprising result to a layman, and I should think that most Members of the

Mr. *Sexton*—continued.

House of Commons would be surprised to find that a letting for temporary necessity, or temporary convenience, might be for "lives and years?"—"Lives" is the only case I know.

10761. Now as to your jurisdiction, you are called an inferior Court?—Yes, we are called an inferior Court, and come within the rule of being liable to be prohibited as an inferior Court.

10762. Would you state clearly the effect upon the force of your jurisdiction regarded as being an inferior Court?—It has no practical effect, except that if any Order of ours is made without jurisdiction, an application may be made to the Queen's Bench or Exchequer Division for a prohibition to prohibit us from acting on the Order. That is quite irrespective of the appellate jurisdiction to the Court of Appeal.

10763. First let me ask you, does your Order bind the parties in all cases?—Certainly.

10764. But those interested may question your Order upon the ground, and only upon the ground, that you had no jurisdiction?—In my opinion, and having regard specially to the judgment of the Lord Chief Baron in the case of *ex parte* Johnston (it is reported and has been referred to already), if the relation of landlord and tenant exists, the decision of the Land Commission on any question of law that arises directly is binding upon all parties, and no Order of the Land Commission could be restrained or prohibited by any Court in that case.

10765. Can a Court examining an Order of yours inquire whether you were correct in concluding that you had jurisdiction?—The Court would inquire whether the relation of landlord and tenant existed, and whether, in the language of the Statute, there was a dispute between landlord and tenant as to the question of the fair rent. Once the Court has ascertained that, its jurisdiction to deal with the Land Commission Order is at an end. That is illustrated by that case of *ex-parte* Johnston, in which, undoubtedly, a Sub-Commission had fixed a rent in the case of a future tenancy, and the Court of Exchequer examined first as to whether the relation of landlord and tenant existed, and having come to the conclusion that the relation of landlord and tenant existed, they were unanimously of opinion that they could not touch the Order, although in point of fact it was erroneous.

10766. If the Land Commission were declared to be a superior Court, would that give your Orders greater force?—I really think it would make no practical difference. The cases we have had of attempts at prohibition (they have been only four or five) have all failed, I think; everyone of them, or all but one, perhaps; Fox *v.* Langan.

Mr. *Carson.*

10767. But eventually you succeeded, I think?—We succeeded on the trial after; thanks to the able counsel employed for the Land Commission.

Mr. *T. M. Healy.*

10768. Donelly *v.* Rossmore did not fail?—Yes, that is another case, too; but that is a mandamus.

10769. What

Mr. *Sexton.*

10769. What I am rather troubled about is whether another Court could inquire whether a tenant was really a "present tenant," or if the holding was a holding to which the Act applied; in other words, whether you were right in concluding that you had jurisdiction?— In my opinion, as I have already stated, if the relation of landlord and tenant exists, and the Land Commission has decided that the man is a present tenant, or that the holding is not demesne land, or is not a town park, and that case is not taken to the Court of Appeal, no other Court can re-investigate the matter. That is my opinion. It is all perfectly clear, as I have mentioned already, as between the parties to the immediate decision; but in my opinion the decision of the Land Commission in such a case is in the nature of a judgment *in rem*, as no doubt it is a judgment on a question of status and, if so, it would bind, not merely the parties to the decision, but all other parties.

10770. The jurisdiction of a superior Court is implied or assumed?—Yes.

10771. But your jurisdiction is open to be questioned, to be examined?—We have the jurisdiction of a court of record given to us.

10772. But a competent Court may examine whether you were entitled in the case to exercise jurisdiction?—As I have said already, the Queen's Bench or the Exchequer Division, on an application for a prohibition, for instance, might examine whether the relation of landlord and tenant existed in the case before us. If they found it did not exist, then they might proceed to prohibit and suspend any order of ours?

10773. Whether they thought that the holding was one to which the Act applied or not?—They could not go into that question at all, that is my view if the relation of landlord and tenant existed.

10774. We understand that a present tenancy may be terminated by reason of any interest in a person other than the landlord, just as if a present tenancy had not been created?—Yes, that is so. A present tenancy, as I mentioned in those notes of mine, does not imply any particular *quantum* of interest, it only means a tenancy created at a particular period, or existing at a particular period. If it was a yearly tenancy which would terminate irrespective of the Act of 1881, the Act of 1881 gives it no increased permanence.

10775. And apart from anything done by the tenant himself, the ejection of a middleman or the death of a tenant for life may put the tenant back into the position of a tenant at will?—That is so in the case of a tenant for life. If the yearly tenancy was created by the tenant for life, but only in that case, it might put him back into the position of a tenant at will.

10776. Or if it was changed so as to make it legally a new tenancy?—His interest is not increased in any way by fixing a fair rent. His interest remains the same as before in that respect. If it would have terminated before, it would terminate notwithstanding the fair rent being fixed.

10777. Will the "present tenants," whose rents were fixed before decisions were given, which would have ruled them out, be in any danger when they come to the second statutory term?—

Mr. *Sexton*—continued.

What decisions? I think I understand the question in this way: If, for instance, we decided that a holding was not a town park because the aggregation of houses was only a village, I do not think that question could be re-agitated again because there had been an express decision upon the point.

10778. Does your mind suggest to you any cases in which, rents having been fixed in the years next after 1881, decisions were given afterwards which if given earlier would have shut out those cases; would these men be in danger of being declared not to be "present tenants" at the end of the first term?—I think not. If the question was raised whether a certain holding was demesne land or not, and it was decided that it was not demesne land, although subsequent decisions might establish that it would be demesne land; in such a case I do not think that question could be raised; I think it is decided once for all.

10779. And the statutory term renewable as of course?—I think when it comes to that, the landlord and his descendants and successors are bound by that decision.

10780. There are three or four sorts of "present tenants"; there is the "present tenant" who has gone on at the old rent; he is liable to be evicted, subject to the protection of going into Court?—Subject to going in and stopping the proceedings, and then having a fair rent fixed.

10781. Then there is the "present tenant" who has accepted an increased rent without having any agreement filed. He has a statutory term which has not been judicially recorded, and, whilst that term endures, he has security; but the question when the term began or when it ended, not being judicially recorded, may be a matter of dispute?—That is under the 4th Section, and as I pointed out, it is to be regretted that there are no means of recording those tenancies, or giving any information as to when the term commenced or when it will end. It is a desirable thing, of course, that a record should be kept of these transactions.

10782. And that the record should be obligatory?—Yes.

Mr. *Brodrick.*

10783. Have you any idea of how many such tenancies there are?—I imagine there are very few. Some few cases have come before me in which we have dismissed the originating notice on the ground that the rent had been already fixed by the tenant submitting to an increase of rent after the passing of the Act.

Mr. *Sexton.*

10784. You have no means of knowing how many there may be, or how few?—I have not, but I imagine they are but few from the rareness in which such a question arises before us.

10785. Then a third sort of "present tenant" are those who have had agreements filed?—Yes.

10786. Those agreements were mostly come to (two-thirds of them) between 1881 and 1885, and we have it in evidence that the rents fixed in those years are materially higher than they would be now, owing to the fall in prices and

Mr. *Sexton*—continued.

increased cost of labour. Of course, if the statutory term is left as it is, all those people who had agreements filed under such circumstances, will have to go on paying rents as fixed, five or six years more?—They are just in the same position as any other judicial tenant during the same period; I mean to say they are in the same position as men who, during that time, had their rents fixed by Sub-Commission or County Court, at a higher rate than at present; I do not see any distinction in principle between them.

10787. There is this difference, however, that we have evidence that in many cases where these agreements were not filed by inadvertence and came into Court afterwards, the reductions given in Court were more than double those that had been given by agreement?—I do not know that. I can only answer from my own knowledge. I know that these agreements, as I have said, are sometimes produced before me; but I have never gone into the question to compare them with the judicial rents fixed at the same time.

10788. With regard to these tenants who have either filed agreements or come into Court to have their rent fixed, they are safe to the end of the statutory term subject to the conditions, but when the statutory term expires, there seems to be a doubt (I think a doubt first suggested by Mr. Carson) whether the old rent does not revive?—In my opinion, as I have said (guarding it as not being taken in the sense of a judicial opinion in any way) a fair rent fixed (because the terms of the 8th Section are not to fix a rent "for 15 years," or "the statutory term," but to fix "the fair rent of the holding") will go on even though the statutory term has come to an end. That, of course, as I say, is subject to my mind being altered on the subject.

10789. The Act says that the tenant shall not during the continuance of a statutory term in his tenancy be compelled to pay a higher rent than the rent payable at the commencement?—Yes. After the termination of the statutory term, if the landlord demands a higher rent he can proceed to enforce it by means of a notice to quit, unless proceedings are taken afresh to recreate a statutory term.

10790. Would it not be well to provide explicitly that at the end of a statutory term the rent payable within the term should continue to be the rent payable until either the agreement was filed, or until either party came into Court?—That would remove any question.

10791. Are the future tenants many, do you think; are they the exception?—That I have no knowledge of, because naturally very few future tenancies come before me in any shape or form.

10792. But I suppose we may assume that when a present tenancy determines as a rule, a future tenancy is created?—Certainly, if a present tenancy is determined in any way; if, for instance, the present tenancy is determined by eviction for non-payment of rent, then, unless the old tenant is reinstated, the tenancy is a future tenancy whether the same tenant continues or a new man is taken in.

10793. The number of future tenancies, therefore, is an increasing number?—I suppose it is; yes.

Mr. *Sexton*—continued.

10794. There are two kinds of future tenancies, I take it. There are first those who have gone on at the rent first imposed upon them; they have no security whatever; they are liable to eviction?—Future tenants who have not submitted to any increase of rent?

10795. Yes; quite so?—They are liable to eviction; but they have the right to compensation for disturbance and compensation for improvements.

10796. But they are liable at any time to eviction?—They are liable to eviction, assuming, as I do, that you are speaking of tenancies from year to year. Of course, if they have taken leases they can hold on during the terms of their leases.

10797. A "future tenant," a tenant from year to year, who has accepted an increased rent, has acquired a statutory term?—Yes; under the 4th Section of the Act. A future tenant under the 4th Section of the Act (it applies both to "future" and "present" tenants), if he submit to an increase of rent, acquires one statutory term.

10798. Precisely; he acquires one statutory term; at the end of that one statutory term what is the position?—I find nothing in the Act to enable him to obtain a new statutory term.

10799. At the end of the statutory term you find nothing in the Act to show what is to happen to him?—No.

10800. Do you take it then that at the end of the statutory term it is no longer a "present tenancy" unless the landlord reconstitutes a fresh statutory term by a fresh increase of rent; that would do it, would it not?—I see no other way; but that might be done by a mere nominal increase, a farthing or a penny increase.

10801. But unless the landlord is kind enough to do that, the "present tenancy" is at an end?—Yes, I see no other way of constituting a second or a further statutory term. The landlord cannot fix a rent on a future tenancy.

10802. And a "future tenant" never goes into Court?—No, never.

10803. After having had only security for 15 years this future tenant is then remitted back to the same position as that which he would have held if the Act of 1881 had never passed?—Yes; he has the right to compensation for improvements and the right to compensation for disturbance and nothing more.

10804. And is liable to eviction?—And is liable to eviction.

10805. It is important to the tenant, is it not, that the Legislature should consider whether the future tenant in that case is to be remitted back to that position?—That is a question for the Legislature.

10806. Your Table of true values is, I think, itself of limited value, for it gives us no dates, and does not say what period is covered?—That was only just taken out merely to illustrate what I was saying in reference to the question of the continuance of a right of appeal.

10807. It gives only the cases of increase?—That

Mr. *Sexton*—continued.

That is so; we decreased in some cases, but not so substantially.

10808. I see that, by the pink Report, your Commissioners are directed to inform you in any case in which the tenancy has been purchased since the Land Act of 1870, giving the date and the amount of the purchase money. Could you give us a return for a substantial period, showing firstly the true values and the specified values fixed, the old rent, the new rent, and the capital value of the improvements?—The "capital value of the improvements." I do not think I could do that; I am afraid not; I do not think we have any record of that.

10809. Not in the field books?—The Sub-Commissioners I cannot answer for; I do not know.

10810. Will you give us the best return you can, showing also at the same time the prices given for future tenancies under free sale, with the old rent and the new rent?—Of course the Land Commission is only anxious to give all the information it can to this Committee.

10811. Then we shall have further returns?—Certainly.

10812. The number of appeals to the Land Commission for rehearing has been very large, about 40,000?—I believe so.

10813. And about 20,000 have been heard?—These figures already appear, but I do not profess to carry the returns in my head.

10814. Have you any average figure in your mind as to the cost of an appeal to you?—I have not; but it can easily be ascertained from the solicitor who taxes the costs what the costs would be.

10815. I see here from a memorandum that the cost of an application to fix a fair rent varies from 2*l.* to 29*l.* for each side, I suppose; the cost anyhow of hearing 20,000 appeals has been enormous?—Yes, enormous.

10816. A quarter of a million at least; a very serious item?—No doubt.

10817. And these appeals cause delay also, no doubt?—It is a very serious matter.

10818. Because there are only three of you high functionaries to hear all these appeals all over Ireland?—But I trust in the future there will not be so many.

10819. The appeals will not be so many?—Oh, I think not.

10820. Your scheme of costs for appeals is very tempting to the landlord, I think, because out of the four possible cases in which the landlord appeals, in one case the tenant has to pay the landlord's costs, in another each party has to abide his own costs, and when the tenant appeals (and this is very remarkable) in no possible case can the tenant receive his costs?—In no possible case can the tenant receive his costs.

10821. Is not that a very extraordinary arrangement?—Oh, no; where the tenant appeals he never gets costs.

Chairman.

10822. Under no circumstances?—Under no circumstances; and in one case when the landlord appeals he gets costs; that is only in the event of the original rent being restored, and there could not be anything corresponding to that in the tenant's appeal.

Chairman—continued.

10823. In the second case the landlord only abides his own costs, and the tenant has to pay his?—Yes.

10824. It is certainly, I submit to you, somewhat extraordinary where the scheme of appeal is part of the law that the tenant is warned by these rules that no matter what happens he cannot get his costs?—The practical cases are the first three of the landlord's appeals, and the first three of the tenant's appeals; the restoration of the old rent is a very rare thing.

10825. There are only "three of the tenants'" cases altogether; not "the first three." In the first case, if the judicial rent is affirmed, or if the judicial rent is reduced, when the landlord appeals, the tenant gets costs in both those cases. If the judicial rent is increased each party abides his own costs, and if the former rent be restored the tenant pays costs. Then when the tenant appeals, if the judicial rent is increased or affirmed, the landlord is entitled to costs, and if the judicial rent be reduced each party abides his own costs. Finally, when the landlord and tenant both appeal, each party abides his own costs?—That is exactly so, except in special cases.

10826. This is the effect of it: the tenants of Ireland are warned by this scheme that if any of them appeal, no matter what may be the result of the decision, no matter how much the rent may be reduced, they will never get any costs?—They will never get any costs, and the landlord will never get any costs, except in the very rare cases in which we restore the original rent.

10827. Where the landlord and tenant both appeal, as a rule, each party abides his own costs?—That is the rule, subject to certain exceptions.

10828-29. I have had a case sent to me by one of my constituents, a gentleman named Thomas B. Salis, who had an action against his landlord, Samuel Murray Hussey. He, I understand, had spent 600*l.* on the farm; it took him three years to reach the Sub-Commission Court, and two years after that to reach you, that makes five years. The Sub-Commission reduced the rent from 52*l.* 16*s.* to 50*l.*, and the landlord and tenant both appealed?—What happened to the rent?

10830. You not only restored the rent to 52*l.* 16*s.*, but increased it to 55*l.* You increased it beyond the figure of the old rent, and you obliged the man to pay not only his own costs, but also 7*l.* 4*s.* for the costs of the landlord?—I know nothing about the particular case.

10831. It seems to conflict with your rule that when the landlord and tenant both appeal, each party abides his own costs. They both appealed; you increased the rent beyond the old rent; you added 2*l.* 4*s.* to the old rent, and made the tenant pay the costs of the landlord?—I suppose there were some special facts in that case.

10832. He feels it to be a hardship?—There are exceptions, but the general rules are stated there. Those rules were laid down in 1882 by Mr. Justice O'Hagan and Mr. Commissioner Litton.

Chairman—continued.

10833. You have given us a return suggesting that the Appeal Court does make substantial alterations?—In certain cases. I understand you have asked for a fuller return, and you shall have it.

10834. What is the usual result of an appeal; is it to affirm the old rent?—I could not tell you; the statistics will tell you that.

10835. Have you any general idea?—In a very large number of cases there are confirmations; but in other cases that is not so at all. It greatly depends upon the particular cases.

10836. Would it be correct to say that the ordinary result is that the rent below is affirmed; and that when the rent is reduced or increased it is reduced or increased by a small percentage?—I think that would not be correct. No, I do not think I can venture to make such a general statement as that.

10837. That is the impression I have derived from a study of the figures?—In some parts of the country, for instance, there would be substantial increases, and comparatively few confirmations; in other places, on the other hand, there would be decreases.

10838. This rehearing is an appeal from three gentlemen, two of whom are agricultural experts who inspect the farm, to three gentlemen, none of whom inspect the farm, upon the inspection of two valuers who take the improvements as they were found below?—As a rule, they take the improvements found in the Court below; they make their valuation upon that basis; but sometimes they note additional improvements if they see them.

10839. Looking to the poverty of so many of these tenants, the smallness of the case, the cost of an appeal to landlord and tenant, and the relation of the two tribunals as to personal knowledge of agriculture, do you think it worth while to keep up in every petty case of value this system of appeal to you?—I think, as I have said already, that great injustice would be done in individual cases unless there was a right of appeal. I think there are inequalities. As I have said, if you could have the same tribunal as a Sub-Commission fixing rents all over Ireland, then I should say have no appeal at all on questions of value; but where you have a number of different Sub-Commissions, with different ideas, then I am afraid that at present the right of appeal must be continued.

10840. But you have power under Section 50, paragraph "O," of the Act of 1881, to make rules "as to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may seem to the Land Commission expedient to make rules for the purpose of carrying this Act, or any part of any Act incorporated herewith, into effect." Why should not you secure uniformity by giving some instructions upon the main element of value?—Because that would be instructions "upon the main element of value," that really the valuers are the proper judges of and not we ourselves. If Parliament would fix what a "fair rent" is and say that in determining a fair rent you are to proceed according to certain formulæ we might give some direction to have that formula carried out. The evidence given before this Committee, (and no other evidence could be given), is that the fair rent is fixed according to the experience of the individual Sub-Commissioner.

10841. If Parliament spoke more clearly there would not be the same necessity for an appeal?—If Parliament defined what a "fair rent" was, there would not be the same necessity, perhaps; but I may say I think that Parliament will have a very difficult job whenever it sets about it to define what a "fair rent" is.

10842. At any rate, the "job" might be difficult, but it would lessen the difficulty of the "job" of fixing rent, perhaps?—Yes.

10843. Are you in favour of allowing the parties the option of having the holding valued by a couple of valuers in advance of the Sub-Commission, and of allowing them to agree, if they will, upon that rent, with a reference to the Sub-Commission if they choose?—I would give them no option in the first instance. If you gave them an option they would not agree. I would send down as a matter of course a valuer, and then give them the option of going before the Sub-Commission afterwards. There are great practical difficulties in getting the parties to agree beforehand to refer a case to a valuer.

10844. You would maintain an appeal on value in every case, while at the same time you would say to the tenant: "If you appeal and succeed we will never give you costs"?—I think it is justice.

10845. I want to ask you a few questions upon the mode of valuing rents, and the mode of valuing a farm. The value is fixed, I understand, upon a rent per acre, calculated according to the estimated gross value of the produce. The produce of a farm is the best test of rent?—Produce and prices.

10846. Of course, prices applied to produce. When you fix the acreable rent with regard to the value of the produce, does not that rent include the full value of the holding as it stands, buildings as well as land?—That I can express no opinion upon. I would treat the evidence of valuers as the evidence of experts who understand these principles a great deal better than I do; and I take their evidence just in the same way as I take the evidence of any other skilled witness on any other controverted question.

10847. At the same time, as it stands, it appears to many good judges that, whilst you profess to value only the land, the value of the buildings goes in?—I do not think so. I think that the valuers will tell you that they make a valuation of the land alone, independently of the buildings; an acreable valuation alone; they are experts, and understand the matter a great deal better than I do.

10848. You never make any deduction from the full value for the buildings made by the tenant; you ignore them?—Never, we simply ignore them; we put no rent on them.

10849. You add the letting value of buildings made by the landlord?—We give the landlord the letting value, or a fair sum, when the buildings are his.

10850. It is believed by many that the effect of that system is that the tenant pays rent upon his own buildings, that the value of them is necessarily

Chairman—continued.

necessarily included in the value of the land in a tillage farm, and that he pays rent twice upon the landlord's buildings?—The valuers tell you that that is not so. The valuers are gentlemen of very great experience, and there seems to be a perfect unanimity of opinion on that point. They say they can value the land quite irrespective of any buildings; and that the acreable valuation they give puts nothing on the buildings; and I have no reason to doubt that.

10851. But you could avoid the suspicion if you pleased by valuing the buildings and the land together in the first instance and then deducting?—I do not see any advantage in that.

10852. Do you see any objection to it?—That is really a matter of valuation and not a question of law; and my opinion would be certainly valueless to the Committee upon that.

10853. Now, as to the letting value of improvements: the present state of that question is peculiar so far as concerns the evidence. The general evidence here is that you allow a percentage upon the letting value of the improvements in the soil?—The capital value of the improvements.

10854. Yes, upon the capital value; but that the remainder goes to the landlord?—I have already discussed that, you know.

10855. You have read the evidence?—I have.

10856. You recognise that the general drift of the evidence is that after the allowance the rest goes to the landlord?—Yes; but that is all subject to this observation that I have made, that when they value the land at 20*s.* or 10*s.* an acre (that is the improved land) it means land in the hands of the sitting tenant, and therefore to that extent, and to that extent only, is there any apportionment of the increased letting value.

10857. The evidence is that they value the farm as for a stranger coming in, and that they make no deduction from that except for improvements?—Then I must respectfully dissent from that view of the evidence, and I have pointed out three witnesses who gave evidence to the direct contrary, Colonel Bayly, Mr. MacAfee, and Mr. Roberts.

10858. Colonel Bayly's evidence was peculiar in many respects. The Committee failed to understand his theory of improvability; he appeared to put rent on an improvement before it was made?—Colonel Bayly was very clear that he treated the land as it would be in the hands of the sitting tenant.

10859. Under the head of "Improvability," he valued something not yet done, but that might be done; in regard to some improvements he gave a percentage; with regard to others he gave the whole of the letting value; he was certainly individualistic?—If I might express an opinion upon Colonel Bayly's evidence, he gave the value twice.

10860. You quoted him as an authority?—As I have said already, I do not like to comment on the evidence of any witness.

10860*. Now I put it to you that Colonel Bayly and Mr. MacAfee did say that they allowed the whole letting value; but the three legal Sub-Commissioners, the whole of them (I do not name them), in addition to Mr. MacAfee,

Chairman—continued.

Mr. Cunningham, the county court judge of Kerry, and Mr. Heard, a county court valuer, have all testified that the practice is to make an allowance out of the letting value and to give the rest to the landlord?—And certainly beyond all doubt no allowance *quâ* increased letting value is given to the tenant.

10861. They made no such distinction?—They do not make such a distinction.

10861*. They conveyed to us that in their judgment the effect of their system is, after they have made the allowance for the letting value, to give the rest to the landlord; have you any observation to make upon that?—I have no observation to make at all in reference to that, except this: that I think that as far as distribution of increased letting value is concerned they are perfectly right, and that they act in direct accordance with the law.

10862. But every one of these witnesses testified that he never took into account the occupation right, first that he made an allowance for the improvements; secondly, that the rest was given to the landlord; and thirdly, that in fixing the rent, the rent was fixed as for a solvent person coming into the farm without regard to the interest of the sitting tenant. Now, does not that disclose a curious absence of uniformity in the system?—That is a matter, of course, of comment upon the evidence. I have already expressed what my views are. It may be, of course, that my view as to the existence of this occupation interest is wrong, and may be eventually proved to be wrong, but I think it exists.

10863. And in your practice as the head of the Land Commission have you allowed it?—I tell you the question has never been raised in any shape or form. The evidence always seems to me to be given as evidence of what the holding would be worth to the "sitting tenant," as he has been called here in this inquiry.

10864. Is it possible that in the Land Commission Court in Dublin the basis has been the rent that the sitting tenant should pay, whilst in at least three Sub-Commissions, according to the evidence of their heads, it has been something else?—We can never tell what the question is until it is raised before us. No such question has ever been raised, and that is all I can say.

10865. But the facts are distinct, that three Sub-Commission Courts, according to their presidents, fix the rent as what a solvent stranger would pay, whilst you in Dublin, at the head of the system, fix the rent as what the sitting tenant would pay, not a stranger. Is it possible to explain how that gulf, that difference, continues to exist?—I say again, as I have said several times already, that no question as to the existence or non-existence of this occupation interest has ever been raised before us.

10866. Do not you and your colleagues in coming to a judgment ever ask yourselves, or each other——?—What passed between ourselves is a question that I respectfully decline to answer; but as to what passed in court, I say the question was never raised, except that sometimes (as has been mentioned, I think, already) the question has been put: "Do you mean to

Chairman—continued.

value it so-and-so; is that in the hands of the tenant?" The difficulty all arises from not knowing what is a fair rent under the Statute. Is it a fair rent to an outsider, or is it a fair rent to the tenant in occupation?

10867. Just so; and the evidence we have is that in three of your sub-courts the rents fixed is a rent that a stranger would pay, and that no consideration is had to the interest of the sitting tenant?—I can only repeat what I have said before. The evidence of some of the witnesses, at any rate, is not to that extent. I regard the occupation right as a most important element to be considered in fixing the rent. I am arguing as to the extraordinary discrepancy at this date, 13 years after the Act was passed, between the Chief Commissioner and the Sub-Commissioners. —I do not think that there is any discrepancy, because no matter what certain witnesses may have said, in my opinion the value that is put is the value as in the hands of the tenant.

10868. Would you not take the legal Sub-Commissioner's testimony as evidence of what they do?—We have one of the lay Sub-Commissioners acting under the legal Sub-Commissioner, Mr. Doyle, Colonel Bayly, and we have Mr. MacAfee acting under Mr. Bailey, and both of them make allowance for occupation interest.

10869. Two witnesses out of nine have suggested that they do; the rest have all denied it?—Mr. MacAfee says that he has no doubt that other Commissions act in the same way, and that there is practically no difference in the way in which rents are fixed in Ulster and out of Ulster.

10870. But other Commissioners have spoken for themselves. I take the legal Sub-Commissioners. You know that dissents continually arise in Sub-Commission Courts between the two lay Commissioners?—Sometimes they do.

10871. We may take it that if the two Sub-Commissioners differ either as to fair rent or as to an element of value, the legal Commissioner has to decide between them?—Yes.

10872. Would it be possible in such a case, if the occupation right were taken into account (I believe it is not) for that legal Sub-Commissioner in settling the difference between the other two to avoid asking each of them, "How much lower have you fixed the rent because of the occupation right?"—In my opinion the question would never arise in practice. The fact would be that A. B. valued the lands at 25*s.* an acre, and C. D. valued them at 20*s.* an acre, and the question would be to decide between the two. No question would be raised about occupation interest.

10873. Would the legal Sub-Commissioner ever ask them the question?—I cannot tell you.

10874. But in all probability would he not ask them: "Is this what a solvent tenant ought to pay, or what the sitting tenant ought to pay?"—I cannot possibly have any knowledge as to what passes between the Sub-Commissioners.

10875. Then is it possible for three men to go on together fixing rents, one having the idea that he gives value for occupation right and another feeling that he does not?—It is plain that it is possible, for there is Mr. MacAfee working with

Chairman—continued.

Mr. Bailey, and Mr. MacAfee says that he does, and Mr. Bailey says that he does not; and there is Colonel Bayly working with Mr. Doyle, and Colonel Bayly says that he does, and Mr. Doyle says that he does not.

10876. Supposing that there are two lay Sub-Commissioners, one taking the occupation right into consideration, and they other not; must they not differ about the rent?—I imagine that they do not differ.

10877. They do very often?—I imagine that they do not differ upon that question.

10878. Supposing that they do, and that they come to the legal Sub-Commissioner, would it be possible for him to avoid discovering that the one took into account the occupation right, and that the other did not?—It would be quite possible; but the question would not arise, because they would both take it into account, and whoever was acting with Mr. MacAfee would act upon the same principles. They would differ upon the amount, and they would come to Mr. Bailey, but Mr. Bailey would never know that there was any difference raised as to occupation interest.

10879. It is a matter of vital importance?—At the same time I would be glad if Parliament would define whether this occupation interest exists or not.

10880. So should I, and I think it is an unfair burden to be placed upon the functionaries by the Act. But the point I am at present on is whether it is really possible for these men to go on, the legal Commissioners saying, "We fix the rent with regard to occupation right"; and some lay Commissioners saying, "We fix the rent as for a stranger, taking no account of occupation right"; and that these two can go on for years?—It is perfectly plain, as I have said already, and can only repeat it, that such things do go on, because Mr. MacAfee and Colonel Bayly have no doubt as to the views that they take in the matter.

10881. The question has never been asked whether the lay Commissioners ever take into account occupation right or not?—No; and I should say that he would have very great difficulty in putting any money value on it.

10882. You have never instructed any Sub-Commissioners to take into account occupation right?—I have never instructed the Sub-Commissioners in anything.

10883. Have you ever instructed the county court valuers to take occupation right into account?—We have nothing to do with them; they are as independent of us as they are of this Committee.

10884. Do you not make rules for them?—No; the county court valuers are not our officers.

10885. And you make no rules for them?—We give them no instructions at all. We appoint the county court valuers, with the consent of the Lord Lieutenant.

10886. The county court judges and the county court valuers have told us in most emphatic language that they give the tenant credit for occupation right in his improvement, but that they charge him the same rent that they would

Chairman—continued.

would charge to a stranger coming in with no interest in the holding?—As I have already stated, we have no more power to direct a County Court judge as to what view he will take than we have to direct the judges of the Superior Courts. Supposing that a County Court judge says, "I will not take this occupation interest into account." We cannot touch him.

10887. But if the County Courts do not take the occupation right into account, and you do, what would happen then?—Then there would be a divergence of opinion, and on that an appeal. If there were any such question ever raised on an appeal we would state a case for the Court of Appeal as to whether this occupation interest ought to be taken into account or not.

10888. But I notice, and I think it is a significant fact, that on appeal all the rents of the County Court judges are raised in your Court; that that is the effect of it. For instance, between 1881 and 1894 there came up to you the case of Thomas B. Silles *v.* Mr. Samuel L. Hussey. In that case the tenant had spent, I understand, about 600*l.* upon improvements in a holding: his rent was 52*l.* 16*s.*; it took him three years from the time he served his notice to get his case before the Sub-Commissioners, who reduced it to 50*l.*; after two years more it came before yourself, Mr. Fitz-Gerald and Mr. French, and you increased the rent from 50*l.* to 55*l.*, which was an increase of 2*l.* 4*s.* over the old rent; and although there is a rule that when both parties appeal each party bears his own cost, and in this case both parties had appealed, the Court obliged the tenant in this case not only to pay his own costs, but 7*l.* 4*s.* for the costs of the landlord. Is it not strange that if they did not take into account the occupation right of the tenant, but fixed the rent as for a stranger, and if you in every case take into account the occupation interest, that you made no reduction in consequence thereof, but increased the rent?—In the same way if the County Court valuers in all those cases did not take into account falling prices we should have no means of knowing whether they did or did not.

10889. But the fact remains that you value rent upon a basis more favourable to the tenants by reason of the inclusion of their occupation right, and yet in the net result you increase the rents to them on appeal from the County Court judges, although they do not take into account the occupation interest, and you do?—As I say, we have no means of knowing the basis upon which the County Courts act.

10890. But the result is there; and in the same way there came to you from the Sub-Commission 431,000*l.* and you made it 432,000*l.*, although the presidents of the Sub-Commission Courts say that they do not take the occupation right into account, and you say that you do?—I have said over and over again that we never take directly into consideration the occupation right as such. I believe individually that this occupation right exists, and I think that the valuations that have been given to us by the valuers and Sub-Commissioners as a matter of fact include something for it.

10891. Notwithstanding their evidence to the

Chairman—continued.

contrary?—Notwithstanding their evidence to the contrary.

10892. Would you say, in the teeth of what Mr. Cunningham and Mr. O'Keefe have said, that they have included occupation right?—No, I do not say that; but I have always been under the impression, until this Committee sat, that they had included it.

10893. Would you say that the three legal members of the Sub-Commission, Mr. Bailey, Mr. Greer, and Mr. Doyle, have been fixing rent for 13 years upon the basis of including the occupation right, although they declare that they have not done so, and although Mr. Doyle, for his part, declares that he does not know what it means?—I have already said, and can only say over and over again, that the men working with them, Mr. MacAffee and Colonel Bayly, tell us that they do include the occupation interest.

10894. Some do not?—Very well.

10895. It not that creating a very unsatisfactory state of things?—I cannot say more, but I can repeat my answer over and over again.

10896. You never instructed either the Sub-Commissioners or even your own appeal valuers on the subject?—No question ever arose, and very possibly might never have arisen, but for the sitting of this Committee. The question was not raised.

10897. But it is so vital to the interest of the parties that the mystery is why it has not been raised. I should have thought that it would have been raised?—It never has been raised.

10898. I should have thought that it would have been raised, debated, fought, and settled, within one month from the passing of the Act?—There is no hint at the existence of such a right except in Lord Justice FitzGibbon's judgment in Adams *v.* Dunseath.

10899. I have had this instructive case from my constituents in Kerry; it is the case of Jeremiah Kennally *v.* James W. Raymond. You heard it a few days ago in Killarney. He went before the County Court judge and two County Court valuers, who do not take the occupation right into account, valued the rent at 28*l.* 10*s.* and 32*l.* The County Court judge, who told me here the other day, in the plainest language, that he gives the tenant credit for nothing but improvements, fixed the rent at 30*l.* Then it went before you, who do give the tenant credit for occupation right, and you raised it to 39*l.*?—I do not know anything of the facts of the particular case. We had the evidence before us of our valuers; the Court valuers, who are gentlemen generally of greater experience than the County Court judges' valuers.

10900. At any rate, whilst the County Court judge fixed the rent as for a stranger with no interest, and you fixed the rent as for a sitting tenant, you raised the County Court judge's rent from 30*l.* to 39*l.* That seems to me an insoluble mystery upon the face of the evidence. Was there a gentleman named Mr. H. R. Morrison, of Moneydig, Gavan, County Derry, can you say, who was a lay Commissioner from 1881 for several years?—I have no recollection of him.

10901. He says in a letter that I have here, "I was appointed a lay Assistant Land Com-

Chairman—continued.

missioner in December 1881, and was most of my time, from that to August 1884, in the counties of Leitrim, Roscommon and Sligo. The evening before we went out, all of us who were appointed at that time were in the Land Court, Dublin. Mr. Litton asked me to meet him in his own room when we were leaving, and there and then told me, after some questions which I do not remember, that I was to put on such a rent as the landlord could let the holding for if he had it in his own hand." That is in direct conflict with your evidence?—That matter was all discussed before the Lords Committee of 1882.

10902. He says, also: "Further, a circular was received by each of us three Commissioners during the summer following instructing us to the same effect. This circular came from the secretary to the Chief Commissioners. How they arrived at this conclusion I never could understand." My question to you is, whether such a circular was issued?—The Committee will look at that Report of the Lords Committee of 1882; but my recollection is that Mr. Justice O'Hagan and Mr. Litton were asked the same question, and they denied the existence of any such instructions.

10903. If such a circular was issued, can a copy of it be procured?—Certainly; a copy will be sent to this Committee if it exists; but I never heard of it up to the present moment.

10904. I desire to ask you now as head of the Land Commission whether you will cause search to be made, and will send us, along with any other instructions issued at any time to Sub-Commissioners, the circular to which Mr. Morrison refers?—If such a circular was issued and if it is forthcoming, it certainly shall be sent to the Committee.

Mr. *Carson.*

10905. Are you acquainted with the 9th Section of the Act of 1881?—Yes.

10906. They call it the Equity Section?—Yes.

10907. That section runs as follows: "Where the Court, on the hearing of an application of either landlord or tenant respecting any matter under this Act, is of opinion that the conduct of either landlord or tenant has been unreasonable, or that the one has unreasonably refused any proposal made by the other, the Court may do as follows: it may refuse to accede to the application," and so on. Have you ever used that section at all?—I have reversed one order under it; but I have never made an order in accordance with it. There was one case that came before me in which the Sub-Commissioners alleged that the tenant did not point out a portion of the holding, a house that was detached, and they dismissed it under that section. When the case came before us we came to the conclusion that the penalty was too severe a one, to exclude him altogether, and therefore we allowed the tenant to go in again to have his case reinstated upon payment of the costs which had been incurred. That is the only occasion, so far as I remember, on which this so-called Equity Section was ever brought before us.

10908. Then, as I understand, in your experience you have never dismissed a case by

Mr. *Carson*—continued.

reason of unreasonable conduct on the part of the tenant?—No.

10909. What unreasonable conduct on the part of the tenant would entitle you to dismiss the case?—As to what unreasonable conduct would be a sufficient ground I do not know, because I have had no opportunity of judging of the matter; but the unreasonable conduct which has been alleged in one or two cases has been allowing buildings to get dilapidated, and so forth; and in those cases where the lands were held under lease, and the landlord had his remedy by action on the covenant, we thought that we should not exclude the tenant.

10910–11. As I understand, practically, you can give us no particular state of facts which has ever been held to be such unreasonable conduct?—No. Some cases may have been excluded I believe, by the Sub-Commissioners, especially in the earlier days of the Commission, under that section, but of recent years no cases have come before us except one or two.

10912. You have been asked a good deal about this allowance for the occupation right in fixing the fair rent, and I understood all that you have said. Have you construed the Act of Parliament as meaning that a fair rent was the competition rent minus the yearly value of the tenant's interest in the holding?—No, never such a definite formula as that.

10913. Are you aware that that was the formula laid down by Mr. Law, when he was Attorney-General?—I believe so.

10914. But at all events you have construed it in that way?—No. As I said before, the question of occupation right and its existence has never been raised before us directly.

10915. And how far, or whether at all, it would affect the value, I suppose you are not able to say?—Or as regards any question as to what the value of it might be, whether it was a variable quantity varying with the number of years that a tenant had been in occupation, my mind is quite open on all that; and in all that I have said about occupation right, as I said to Mr. Sexton, I am stating my own individual opinion.

10916. Is the competition rent considered at all?—No, not so far as I know.

10917. Do you agree with Mr. Attorney-General Law that not to consider the competition rent was monstrously unjust?—That is a matter of policy upon which my opinion is valueless.

10918. As regards the question of appeal, I gather for reasons you have given that you think the right of appeal ought to be kept as it is?—Yes, I think it ought to be continued.

10919. And as regards the question of costs, as I understand, the only case in which a landlord can get his costs is if the old rent is restored?—Yes, that is the only case.

10920. Is that upon the grounds that in that case you would consider that the tenant was not justified in going to the Court?—Yes, not justified in revising the rent.

10921. Could you tell me at all how many cases are transferred from the county courts into your courts?—I think there is a Return which shows that. In Table 11 of our last Report you will see the number for that year; and in Table

Mr. *Carson*—continued.

12 the entire period from the commencement of the Land Commission.

10922. Can you suggest any reason why so few rents have been fixed in the County Courts?—That is a matter outside my knowledge.

10923. Can you suggest no reason to us?—It is more a matter of confidence in having the two Sub-Commissioners to value the holdings than in having a single valuer and a County Court judge.

10924. One gentleman suggested to us that if there were two valuers in the County Court, instead of one, that would give more confidence in the County Court?—I am not sure of that, and for this reason, that the valuers there are only paid by the job, so to speak, and they are not so independent.

10925. Do you think that that is a very bad system?—I think it is a very bad system.

10926. Do not you think that the valuers employed by the County Court ought to be in the same independent position as the other valuers are?—If there is work for them, they ought to be in the same independent position as the other valuers are.

10927. Could you not send down, from time to time, valuers for the County Court who are on your regular permanent staff?—No; as I understand the Act of Parliament, we, with the sanction of the Lord Lieutenant, appoint a number of persons as County Court valuers. It is for the judge of the County Court to select any one of those whom he chooses; he is not obliged, necessarily, to select a man living in his own county, and some do not.

10928. And you think it would be an improvement that they should be put in a permanent position?—I think it important that the valuers for the County Court judges should be in the same independent position as the Sub-Commissioners.

10929. When you are transferring from the County Court to your own Court, do you give the transfer as a matter of right?—It is always treated as a matter of right, unless there is some cogent reason to the contrary.

10930. What, for instance, would be a cogent reason to the contrary?—At one time if the tenant would be greatly delayed in the hearing of his case, at the time when the Sub-Commission Courts were very full, and the tenant might be a long time waiting to have his fair rent fixed; then sometimes the transfer was refused; but in any case the order for transfer is now always made, subject to the condition that no proceedings are to be taken by the landlord to evict without an application to the Land Commission.

10931. We may take it, there being not much delay now, that the transfer goes on as a matter of course?—Yes.

10932. You said on the first day when you were examined that you found that sometimes the tenant got up, in some way or other, the sub-tenancies which originally dismissed him?—Yes.

10933. And then proceeded te fix a fair rent?—Yes.

10934. Can they do that?—Quite clearly.

10935. Is that so held?—Yes.

Mr. *Carson*—continued.

10936. I thought that the question might arise as to the status at the time of the passing of the Act?—The question was raised before us in a reported case, of which I could give you the name.

10937. The name is not important?—It was contended there by eminent counsel that, inasmuch as the tenant had not the status at the time of the passing of the Act of 1881, he ought not to be allowed to come in now. I did not think that the question was arguable. It was recently mentioned in the Court of Appeal, and the Court of Appeal seems to have held that the question was not arguable.

10938. So that it is quite clear, and they actually have done it?—It is quite certain that any tenant of a present tenancy, if at the time he makes his application he is in occupation, can have a fair rent fixed, although in the year 1881 or subsequently he had a number of sub-tenants.

10939. And although he may have previously applied and been dismissed?—Yes.

10940. That is no estoppel to him?—That is no estoppel.

10941. I just want to ask you a few questions as regards this true value, or the specified value. Can you tell us how, in your Court, you fix that at all?—As regards the true value, which is the same thing as specified value, we take evidence from persons who will tell us what the selling value would be, and then we give a sum which is not equivalent to the full selling value, but, as I said on a former day, is what we think would be the sum that a solvent tenant could give for the holding, assuming it to be held at a fair rent, and make a reasonable profit out of it.

10942. Then it is not the competitive value?—No.

10943. And when you are assessing that value do you get your own valuers to make a report for you on the true value?—Yes, almost always; I may say invariably.

10944. Do they make any inquiry in the neighbourhood?—I think so always.

10945. As to what farms sell at?—Yes, I think so.

10946. Could you tell me at all whether the value of the tenant's interest since the Act of 1881 has very greatly increased in the open market?—No, that is a matter that I could only say by hearsay, or on information from others. I have no special knowledge of my own, but it would seem to me to be a matter of course that the interest had very largely increased since the passing of the Act.

10947. Is there any way in which we could get any reasonable number of cases which would in formus as to what the selling interest of tenant-right since the passing of the Act of 1881 is?—In our pink forms we have the sales since 1870, and some of those forms will show the sales since 1881.

10948. Could we have a list of those?—It would be difficult. In the South of Ireland and the centre of Ireland farms do not change hands very often by sale; they do sometimes, of course. In the North of Ireland they change hands more frequently.

10949. Are you not aware, and am I not right

Mr. *Carson*—continued.

right in saying, that in very many cases, although the rent was substantially reduced, afterwards the tenants sold the interests in the market at a very large sum?—I have no special knowledge of the subject. After a fair rent has been fixed, of course we have some cases of sales intervening between the fixing of the fair rent by the Sub-Commission and the re-hearing before us. It is only in cases of that kind that the question would come before us, and we have seen large sums given from time to time for the tenant's interest.

10950. Even in cases where the rent has been substantially reduced?—Yes; the greater the reduction made the higher the price which they get, naturally.

10951. But you would think that the higher the price that was given the less reduction there ought to have been. Have you read over these exclusions, as they are called, that were handed in by Mr. Bailey?—Yes, I have.

10952. As regards agistment lettings, do they come within the Act?—Not at all; they are not tenancies of land.

10953. Do they come within any of the Land Acts?—No, they are not holdings.

10954. They are not a letting of the land; they are not properly put down as exclusions from the Act?—No; they are merely particular instances in which the Act does not apply.

10955. Is there any tenancy at all in that case?—There is perhaps a tenancy, but not of a holding; it is not a holding; it is not land within the meaning of the Act.

10956. It is not a letting of the land?—It is only a right to take the profits of the land.

10957. An eatage, they call it; they are not in any of the Acts?—No.

10958. Either the Act of 1870 or 1881?—No.

10959. Nor even the Act of 1860, I think?—No, they are not in the Act of 1860.

10960. And the same thing applies to conacre lettings?—Yes, it is only the letting of a crop.

10961. There is an exception put down here on which I should like your opinion: "The purchaser of a tenancy where the conditions prescribed by Section 1, Act of 1881, are applicable, but have not been complied with, may be excluded from the provisions of the Land Acts. The landlord may continue to treat the vendor as still tenant"?—That is because, if the tenant had not served notice to sell, and sold without giving the prescribed notice under the first section, the landlord might set aside the entire transaction.

10962. Could he, if he went on and received rent from the tenant?—It is done; there is that possibility.

10963. Have you come across any such cases?—No, it is not a question that is likely to arise very often.

10964. That would be a very exceptional case? I think so.

10965. As regards the case of a tenant for life (Massey *v.* Norse's case) creating a tenancy in the land, is it your opinion that there are many cases affected by that doctrine or decision?—I think only to a certain extent. Not many such cases have come before me, but there are several cases of lettings made by a tenant for life for his own life.

Mr. *Carson*—continued.

10966. Do you think that that creates a substantial exception out of the powers of fixing the rent?—I am not able to say substantial, but it is not negligeable, certainly.

10967. Then there is this case: "Where a middleman is ejected for non-payment of rent, all sub-interests in the holding under him are destroyed." Those sub-interests were never in privity with the landlord at all?—They were not in privity with the head landlord.

10968. They were never, of course, his tenants?—They were the tenants of the middleman with, as I have mentioned before, the right of redeeming, if they think fit.

10969. But they can only redeem and put back the old tenancy?—Yes.

10970. They have no tenancy on their own account?—They would re-establish the middleman's interest as well as their own.

10971. The point that I want to make clear is that they never have been tenants to the superior landlord?—No.

10972. Next we have, "Tenancies created by a mortgagor after the date of the mortgage are not binding on the mortgagee?"—That is so.

10973. Have you found any cases in which the mortgagee is prevented from intervening?—I had one case at the last sitting at Belfast, which I thought a very hard case; it was a case where the mortgagor after granting the mortgage made a lease.

Mr. *T. M. Healy.*

10974. That was the case of Grehan *v.* Pim?—The mortgagee afterwards demanded specifically the rent of that lease from the lessee, and the lessee paid it as being the rent under the lease.

Mr. *Carson.*

10975. May I ask you this: when you are fixing the rent, when the tenant serves notice to fix the rent, does the mortgagee get no notice that the rent is going to be fixed?—As a rule not.

10976. Then supposing that a mortgagor, having very little interest in the place, came into Court and said to you in open Court, "I consent to such-and-such a rent being fixed," what would happen?—What would happen is that if the mortgagee afterwards got knowledge of the proceedings, we would give him liberty to intervene, and, if necessary, we would re-hear the case. In numerous cases they do apply, and get leave to intervene, and they are the people who really fight the cases.

10977. But in many cases do not you fix the rents by consent in Court?—Yes.

10978. And you do not make any inquiry then as to whether there are any mortgagees?—No.

10979. And in the same way the landlord and the tenant may file an agreement?—Yes.

10980. And without reference to the mortgagee?—Yes.

10981. The mortgagee is no party?—No.

10982. Within what time would the mortgagee have to come in?—As well as I recollect, there is no time fixed.

10983. Then he could come in at any time?—Unless

Mr. *Carson*—continued.

Unless there was some laches. If it was shown that he had been aware of it, and had neglected to come in, then we might refuse permission.

10984. But at all events, you require no notice to be given to him?—In the case of an agreement there is a time fixed, I think, after notice of the filing of the agreement is given; and if nobody comes in within that time to object, it becomes absolutely filed.

10985. But do not you think that in the case (and unfortunately there are many of them) of a landlord who had little or no interest in the holding, a great wrong might be done to the mortgagee in fixing the rent behind his back?—My experience is that the mortgagees look after their property, and they intervene.

10986. They may be English companies, you know?—I think the English companies look after their interests in Ireland very keenly.

10987. And even although the mortgagor may have consented to the rent, you would not set it aside unless it was at some gross under value?—As a rule not. If he fixed it by agreement and declaration we would not take it off the file, unless there was something in the nature of fraud.

10988. But that might be difficult to prove?—Yes.

10989. Do not you think that there would be a hardship on the mortgagee in those cases?—I have never known of any individual case of hardship; and, on the other hand, I think there should not be any additional expense in serving the mortgagees unless it is absolutely necessary. There is a Schedule published by the Land Commission every month of the agreements and declarations which have been filed in the previous month, and the mortgagees in that way may get knowledge of it.

10990. It would be very hard for a mortgagee to have to go and examine each "Dublin Gazette," to see whether there has been any such agreement or declaration. But, at all events, you do not think it would be an improvement to say that the order ought to be served on the mortgagee?—No, I think not; it would be adding to the expense, and, although there may be a theoretical injustice, I do not think there is any practical injustice.

10991. Is it your opinion that the mortgagees themselves are not inclined to intervene if the rent has been fairly fixed in Court?—I think if it has been fairly fixed, they accept it.

10992. As regards the question of demesne lands, where part of a holding is demesne, the whole is included, is it not?—The whole is out of the Act.

10993. Is that so, even if the part is very trivial?—I never had a case of triviality. I do not see how you can get out of it. I think that if any portion is demesne the entire land should be excluded.

10994. I want to know as regards a fee-farm grant of demesne lands, like the case of Spencer *v.* Tedcastle; I understand you held that that was within the Act?—I held that it was within the Act, because I thought according to the tendency of the decisions up to that time the object of the exclusion of demesne lands was because there ought to be some right of reverter

Mr. *Carson*—continued.

to the landlord; that the landlord ought to have an opportunity of taking back the land into his own possession.

10995. Can you tell me in Spencer *v.* Tedcastle whether that was under a fee-farm grant?—It was originally under a lease for lives, renewable for ever, and it was converted into a fee-farm grant.

10996. As regards Spencer *v.* Tedcastle, was there anything in the evidence to show that that was let as demesne land?—Yes.

10997. Was there anything except the mere calling it demesne land?—Yes, as a matter of fact, at the time of the execution of the original lease the lands were apparently of a demesne or park-like character, and they were used as a park under that by the lessee as part of the demesne of his house.

10998. And there was evidence, you say, in that case that he continued them in the same condition?—They continued down to the time of the application, practically used as part of the park attached to the mansion house.

10999. Is there any record kept of the evidence given?—Only in cases heard before us on appeal of late years. Of late years there is a shorthand writer's note of the evidence in every such case.

11000. But that was heard on affidavit, I think?—Spencer *v.* Tedcastle was a motion and that was heard on affidavit, and the affidavits are preserved.

11001. Could we have the affidavits in that case?—Certainly.

11002. I should myself very much like to see them?—I think the facts are very fairly stated in the Irish Reports. The case is reported in the 32nd Law Reports, Ireland, at page 411.

11003. Did that case at all decide that if you made a fee-farm grant of demesne lands (there being no intention of the lessee to use his demesne for instance) to an ordinary farmer, who converted it and used it as an ordinary farm, it is still demesne?—That question was not discussed at all.

11004. Have you had many cases of home farms?—Very few. We have never held any holding to be a home farm. The question has been raised in some few cases, but we have never had a case that proved to be a home farm.

11005. Have you laid down any definition of what a home farm is?—No; the Court of Appeal have laid down what is practically a definition, namely, a farm not mainly worked for profit; a farm used in connection with the residence, and not mainly used for purposes of profit.

11006. Have there been many cases raised on the ground of being pasture holdings?—Yes, a great many.

11007. Do you think that the law is in a satisfactory condition as regards that?—I should be disposed, as I said the other day, to alter the limit and make it 100*l.* valuation instead of 50*l.*

11008. Do not you think that, having to depend upon the construction of the lease, as to whether the thing is pasture or not, is a very curious way of arriving at the fact?—In most cases of pasture of recent years it is quite independent of the construction of the lease; it is on the user and character of the lands.

 11009. But

Mr. *Carson*—continued.

11009. But they must be let to be used, must they not?—Yes, they must be let to be used, and if you find that the lands are of such a character that they could not reasonably have been used for any other purpose, and that, as a matter of fact, they have been used for pasture, as a rule, we would hold them to be pasture.

11010. Why do you think that the limit should be changed from 50*l.* to 100*l.*?—Because that would exclude all large pasture holdings. There are those Clare cases that we have been obliged to exclude, and some of those are over the 50*l.* limit, and, I think, might well be admitted. I think that the graziers of Meath and Roscommon who pay rents of 600*l.* and 700*l.* a year are not persons for whose benefit the Land Act was necessary; but I think that small tenants of pasture holdings require the same protection and assistance as tillage tenants.

11011–12. Do many cases come within the exception of glebe lands?—One solitary one. That is an exception that need not be noticed.

11013. And English-managed holdings?—The question of English-managed holdings has been raised in three or four cases, but I have never found a holding to be an English-managed holding. Sometimes the improvements were made originally by the landlord, but have not been maintained by him. I am speaking of myself individually. There have been cases excluded by the Land Commission before my time.

11014. Have you never held that a case is an English-managed holding?—Never to my knowledge. I am perfectly certain that I never have.

11015. The next exemption that Mr. Bailey puts down is: "Purchaser of a present tenancy sold for a breach of a statutory condition." Have you had any such case?—I have never had a ase.

11016. No such case has arisen in your experience?—No; it may arise in the future.

11017. Have you found many instances of cases where a tenant has contracted himself out of the Act?—Yes, we have had a number of instances.

11018. His valuation being over 150*l.*?—His valuation being over 50*l.* These were cases that were before the Act of 1881.

11019. That is with reference to the Act of 1870?—Yes; but his contract would be to this effect: I mean not contracting out of the Act of 1881, but I mean contracting not to make a claim for improvements and virtually depriving himself of the power of asking for an exemption from rent on improvement.

11020. I mean cases under the Act of 1881, have you had any such cases?—No, not in my time.

11021. I suppose the number that would arise would be infinitesimal?—I only remember one reported case on the subject.

11022. Do you think it would be possible to lay down any rule as to what proportion of subletting was to contract out of the Act?—Any rule of that kind must necessarily be a rule-of-thumb; but I think that it might be laid down.

11023. What rule would you suggest?—I would not suggest any fraction. I would say not exceeding a certain fraction in acreage and value. Whether that fraction should be a very small one, one-twelfth or going up to one-sixth, I will not suggest.

11024. But you think that we might lay that down?—I think it would save a great deal of litigation, and would prevent a great deal of heart-burning that exists at present by persons being excluded, who are fairly entitled perhaps to come in.

11025. Can you suggest any amendment yourself?—No, I do not suggest any amount. At the same time I do not think that it ought to be a large proportion; I think it ought to be a small proportion, but I would rather not name any amount.

11026. We shall have a difficulty in knowing where the injustice comes in as regards amount, unless we have some guide to help us?—As regards the proportion, I really could not lay down a limit.

11027. Can you tell us any case in which you found that the particular proportion created an injustice?—I could not exactly recall them at the present moment, but I have come across several cases of this kind in which a small proportion, not trivial, had been sub-let before the letting was made to the existing tenant.

11028. I can understand that; that is a different principle, because then both landlord and tenant let and take with the knowledge of subletting it; but I am talking of a case where there were no sub-tenants in when the tenant took, and where he subsequently created the sub-letting. You say that hardships have been created, and I should like to see what your idea was?—I could not tell you what the proportion would be; I cannot recollect.

11029. But at all events, you would say that it ought not to be a substantial proportion?—No, it ought not to be a large proportion, but still something that would go beyond what might be now treated as triviality.

11030. As regards the question of the fair rent, do you think that we could lay down any definition of fair rent?—I think it would be possible to state something definite; to give some legal conception of fair rent, but at present there is none.

11031. Do you think that that would be an improvement?—I think it would be a great improvement, because as matters stand at present the fair rent is fixed undoubtedly largely by the experience of the individual Sub-Commissioner.

11032. Could you suggest to us, for instance, what would be the materials (I do not mean to put it actually into a definition now) that you would recommend?—One of the first questions is the question that has been discussed here, and not before, as to whether the occupation interest of the existing tenant was to be taken into consideration or not. Then another question would be as to how far produce and prices were to be taken into consideration. Then there are certain constant quantities for which I do not think any definition is required, because they are already taken into consideration; that is to say, the character of the soil, the aspect, elevation, want of water, proximity to towns, markets, and so forth. Still it would be well to put them all in together if possible.

11033. Then

Mr. *Carson*—continued.

11033. Then would you suggest that we should try and give an exhaustive definition?—I think not; I think the evidence of the valuers on a question of that kind would be more important than any evidence that I could give.

11034. Can you suggest any improvement in procedure either in your own Court or in the Sub-Commission Court?—I think not. I think that the procedure is very simple and inexpensive.

11035. Do you think that the hearing before the Sub-Commissioners is useful?—Yes.

11036. You would not substitute for it in ordinary cases of value merely sending down the Sub-Commissioners to value?—No, as I said before, in the first instance I would send the court valuer down to value the holding and then if the parties would not accept the rent so conditionally fixed I would send it before the Sub-Commission, just as at present.

11037. If they did not agree to the rents so fixed, why should they not go straight up to your Court, otherwise you would really have three processes?—I would rather send them before the Sub-Commissioners, and I do not think they would come any further. It would be open to consideration then, after they had the two preliminary hearings, whether an alteration ought not to be made in the rules as to costs.

11038. Do you think that any plan could be adopted to avoid the necessity of having all the rents re-heard?—I am afraid not.

11039. Do you think it could be on a system of prices?—I do not think that any schedule of prices would be made use of in fixing rents.

11040. You said in answer to Mr. Kenny, as I understand, that your reason for saying that, was that the tenant might have deteriorated or improved the holding during the statutory term?—That was as regard the necessity for personal inspection.

11041. Why do you say that the schedule of prices, such as was made in the Act of 1887, for instance, would be of no use?—Because the elements of rent depend so much upon the individual holding, and you might have two holdings side by side very differently used; and if you had a schedule of prices applicable to a particular district great injustice might be done in one particular case.

11042. How do you mean differently used?—One being a pasture holding and another a tillage; one might be used for a particular class of cattle, and the land might be suited for another class of cattle. You might even have two pasture holdings together, one suited for breeding stock and the other suited for store cattle; and the schedule of prices in the one case would not be applicable to the other.

Colonel *Waring*.

11043. You mean the suitability of the farm for a particular use, not the use to which it is put?—Certainly, if you could, so to speak, fix certain elements in the farm, and only change the variable portions, you might get at the rent; but you would have to go to each farm to ascertain it.

11044. But when you spoke of the use that was made of the farm, I suppose you meant the use that ought to be made of it?—Yes, the use for which it was best suited.

Mr. *Carson*.

11045. At all events, you think that a schedule of prices would not be a possible way of meeting the difficulty?—I said that my opinion was not worth very much; but the opinion of all the Sub-Commissioners and valuers seems to be that they could not work on a schedule of prices without doing injustice.

11046. What do you say to a schedule of prices, with the right of appeal by any tenant?—I do not see how it could be applied myself.

11047. There is only one other matter that I want to ask a few questions about: it is this Redemption of Rent Act. Under the Redemption of Rent Act, as I understand, you put the rent upon the tenant's improvements?—In the case of fee-farm grantees; not in the case of long leaseholders, because these grantees are outside the Act of 1870.

11048. Then, of course, it must make a substantial difference as to whether a man happened to be the one or the other?—Yes.

11049. What do you do in those cases if you are assessing the purchase-money *quoad* the improvement?—We have to treat the fee-farm grantees as in a different position from long leaseholders, for that very reason; because in the one case (as I said in answer to a question of Mr. Russell's) the rent is secured partly by improvements in respect to which no claim for compensation can be made, and in the other case it is secured partly by improvements in respect to which a claim for compensation can be made. If we have two pieces of land, side by side, one held under a lease of 999 years and the other held under a fee-farm grant, both equal in quality and both having the same rent, the rent of the fee-farm grant will sell for a higher sum; because if the landlord has to evict for that rent he is not liable to a claim for compensation; whereas in the other case he is liable to a claim for compensation.

11050. I suppose I am wrong, but I thought that what the Act was directed to was to have regard in fixing the value to the security for the rent?—That is the security of the rent. One rent is better secured than the other. The fee-farm rent is better secured than the long leasehold rent for that very reason: that if the landlord has to evict for rent he gets the land into his possession free from all claims for improvements.

11051. But for non-payment of rents there can be no claim for improvements?—That is not so.

11052. But in the case of ejectment for non-payment of rent, the tenant cannot claim for improvements?—Yes, he can; he cannot claim for disturbance. The landlord gets the land free from any claim for compensation in the one case, and in the case of a long leasehold he has to pay for the improvements.

11053. Then do I take it that in fixing the price, the difficulty is what would be caused by this liability to a claim for compensation?—The way to put it is this, that in the one case the rent would command a greater number of years' purchase

Mr. *Carson*– continued.

purchase than in the other case, and we give a larger sum.

11054. In fixing the purchase money in ordinary holdings not within the Redemption of Rent Act, is it fixed in the same way as under the Redemption of Rent Act?—Any head rent or superior rent is fixed in the same way; that is what the Act of Parliament tells us to do.

11055. I am talking of a holding?—That is what the terms of the Redemption of Rent Act lay down.

11056. What I want to know is whether, when you fix the price upon any ordinary tenancy from year to year at which a tenant is to purchase, that is regulated upon the adequacy of the security for the rent?—That is taken into consideration, of course; but the language of this Act is special: "Such redemption shall be effected by the payment, subject to the rules of the Land Commission, of such capital sum as may be agreed upon, or as, in case of difference, may be determined by the Land Commission (regard being had to the adequacy of the security) in like manner as if it were a head-rent redeemed under the provisions of Section 16 of the Land Laws (Ireland) Act, 1887."

11057. What I want to ask you is this: You have not any similar words to that in the case of an ordinary sale?—No, we treat this as a head-rent.

11058. And it is valued upon a higher basis?—Yes, at a substantially higher price.

11059. The valuation for sale being at a higher price, do you think it would be fair that the valuation for rent should be put upon the same basis as in the case of an ordinary tenant from year to year?—But the valuation is on a higher price in reference to the fee-farm rent than it would be for a rent of the same amount in a long leasehold, and I see no reason for that.

11060. But, again, a long leasehold is on a higher scale than an ordinary tenancy from year to year?—Yes, but that appears to me to be no reason for putting the rent of a fee-farm grant on a still higher scale.

11061. A higher scale than an ordinary tenancy from year to year, to which the Act of

Mr. *Carson*—continued.

1887 applies?—By reason of the improvements not being the subject of compensation.

11062. Is not the fixing of a fair rent the penalty that the landlord incurs because he will not sell?—Yes.

11063. If he can sell at a higher rate than an ordinary tenancy ought he not to have his rent fixed in reference to the higher rate at which he can sell?—Yes; but the higher rate at which he can sell the rent arises from the fact of this right of compensation not existing.

11064. No, you have told me that it is in consequence of the words having regard to the adequacy of the security, and estimating it as the head rent?—Yes.

11065. You have not got those words in the ordinary purchase?—No.

11066. Then of course you have a different basis for valuation and a higher basis for valuation under the Act?—Yes.

11067. Do not you see that if you reduce the rent in the same way that you would reduce the rent of an ordinary farm, the landlord never can get anything higher than that rent again, and you reduce considerably his purchase money if he goes to sell?—No. I do not think the landlord ought to be placed in a position as if this was merely a rent of a tenancy from year to year. What I have said already is that I do not think he ought to be placed in a different position from the landlord of a long leasehold. If we had a long leasehold for 9,999 years the head rent would not command quite as high a price in consequence of having to pay compensation for improvements; there is that distinction.

11068. The proposal is to enable you to take the improvements in the fee-farm grants into consideration?—I think what would be just is that the fee-farm grantees should be put in the same position as long leaseholders; that they should be able to get exemption from rent on buildings, and the reclamation of waste land. It is not really a matter of very great consequenee.

11069. Yes, it is. It occurs to me that when the landlord goes to sell, then he will be selling something very much more reduced than what he has a right to have under the Act?—I do not think so.

Tuesday, 24th July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Carson.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.

THE RIGHT HON. JOHN MORLEY, IN THE CHAIR.

Mr. Justice BEWLEY, again called in; and further Examined.

Mr. *M'Cartan.*

11070. Is it right to say that the costs and the inconvenience involved to tenants in going to the Chief Commission are much greater than those involved in coming before the Sub-Commission?—The expense?

11071. Yes?—I should say substantially so.

11072. And the inconvenience?— And the inconvenience too, because the Chief Commission, as a rule, only go to a few large towns, and sometimes the parties have to travel a greater distance.

11073. As a rule, you only sit in one town in a county, I believe?—As a rule that is so. Sometimes we take a second town in a large county. We used to sit very often at Bantry, for instance, in Cork, in addition to sitting at Cork; and on one occasion we sat at Killybegs, in addition to sitting at Donegal.

11074. Sometimes you sit in one town for three counties, do you not; for instance, for Armagh, Down and Antrim?—Yes, now especially that the appeals have diminished much in number. We may occasionally only have six or seven cases in one town.

11075. You sit in the town of Lifford, I believe the county town of Donegal?—I think that in my time we have sat in Strabane, immediately on the other side of the river.

11076. Are you aware that the tenants who have to come from Dunloe must travel over 50 miles even to reach Lifford?—I do not know; in some cases they have to travel a considerable distance.

11077. But in the case of the Courts of Sub-Commission, they hold the Courts as near the litigant's own door as possible?—That is so.

11078. I understood you to say that the landlords do not produce witnesses generally in the Sub-Commissions, valuers?—Very frequently the landlords do not produce any valuers before the Sub-Commission.

11079. And in those cases, if the parties are

Mr. *M'Cartan*—continued.

not satisfied with the rents fixed, there is invariably an appeal?—Invariably an appeal.

11080. And the tenant, then, has to incur double costs by appearing before the two Courts?—Yes, there is the risk of a second set of costs.

11081. Is it the Chief Commission or yourself or Commissioner FitzGerald who has the disposing power over the Sub-Commissioners?—Mr. Commissioner FitzGerald, in the distribution of business, arranges the different Sub-Commissions, and we all arrange together what the sittings of our court are to be.

11082. I understand, from the evidence given already, that most of the witnesses agree that it is very desirable to have the Sub-Commissioners working in the part of the country they know best, that is to say, to have them sent to the district which they know best?—To have the Lay Assistant-Commissioners sent?

11083. The Lay Assistant-Commissioners?—There has been some evidence given, I believe, to that effect.

11084. For example, it would not be desirable to send one who only knew the fat lands of Meath down to some of the mountainous places?—On the other hand there is an advantage (which I think has been mentioned by some of the witnesses) in mixing the Assistant-Commissioners more together and getting them into greater uniformity on principles of valuation.

11085. Take, for example now, one very excellent Commissioner who is at the present time sent down to my own county (County Down), Mr. Rice?—I do not know where he is at the present moment.

11086. I do not know whether he is called an Ulster gentleman or not; but he is from Ulster?—I do not know.

11087. And other Ulster men are sent down to other parts of Ireland, although they know nothing at all about those parts; do you think that

Mr. *M'Cartan*—continued.

is desirable?—I think in some respects it is desirable, for the reasons mentioned by some of the witnesses, that the Sub-Commissioners, by mixing together and going over the whole of Ireland get a more general knowledge on the subject of valuation, and are less likely to differ in the basis of their valuations.

11088. How long has the "prices department" been established in the Commission? — The "Agricultural Department"; I can tell you in this way: It commenced at the time of the passing of the Act of 1887, for the specific purposes of that Act, and afterwards it was continued.

11089. That is for the temporary adjustment of rents?—Yes.

11090. Who is in charge of it?—Mr. Wrench is at the head of that.

11091. As to the paper you handed in, in reference to the increases in "true value," I observe that the largest increase you mention is in a case that came before County Court Judge Kisbey?—It is a County Court case, I know.

11092. The rent of the holding was 160*l.*, and the true value fixed by County Court Judge Kisbey was 200*l.*, a little more than one year's rent?—Yes; we increased it, I think, to 600*l.*

11093. In the County Antrim, I see, there is an increase of 20*l.* in the case of Boyes. There is a case in County Antrim where Robert Wilson was tenant, and the trustees of John Wilson, landlord; the area was 90 acres, 1 rood, and 32 perches, and the judicial rent 65*l.* In that case the Sub-Commission fixed the true value at 950*l.*, and the Chief Commissioners reduced it to 600*l.* Do you know anything about the facts of that case?—I have no recollection of the case, but whatever we did we did according to the best of our skill and ability upon the evidence that was given before us on the hearing.

11094. Have you any notion whether the number of cases in which you increased the true value is greater than the number in which you reduced it?—You understand the Committee have ordered a return which will show every case.

11095. That is quite sufficient?—The Committee understand that the sole reason for producing *that* was not for the purpose of showing that we generally raised or that we did not, but to show that if the appellate jurisdiction were taken away the parties in those particular cases would have suffered.

11096. Do you know why the annual reports of the Land Commission are silent as to the cases of specified value and true value?—I do not know whether they do give any. I do not think there is any return at present; certainly there ought to be a return.

Mr. *Sexton.*

11097. You give no information in the annual report, except as to fair rents and purchase?—Yes.

11098. There are many other functions under the Act of 1870: specified value, true value, Resumption of holdings by the landlord, and so on; why should not these all be given in the report?—Certainly, and for the future I think it should be done.

Mr. *M'Cartan.*

11099. There is a very important case here that I want to direct your attention to. It is the case of Harper (tenant) and Robbins (landlord)?—Yes, I have a distinct recollection of the case.

11100. In that case, I understand the facts shortly are that Mr. Harper's predecessor was a man called Moreland, the rent of the farm in Ballyduff in 1852 was 28*l.* 4*s.* 1*d.*; in 1870 it was 32*l.* 14*s.*, and there was a lease given in 1875, when the rent was raised to 35*l.* 19*s.* 6*d.*?—Yes, that is so.

11101. In this case there were certain covenants?—Yes.

11102. The lease contained a recital, as to the recently-made buildings, that at the expiration of the lease they would become the property of the landlord?—Yes.

11103. The lease was for a term of 41 years?—Forty-one years.

11104. After the passing of the 1887 Act Mr. Harper, who then was tenant (I believe the place had been in the family for hundreds of years) took advantage of the 1887 Act and got the rent fixed. He came into Court, and although under Adams *v.* Dunseath he would be entitled to the enjoyment of the house during the term of the lease, the decision of the Court was that he should pay rent in respect of the house towards which the landlord never contributed one penny?—The question was whether the granting of the lease was to be taken as compensation for the house which had been so built, or whether by the express terms of the contract you have referred to in the lease he had contracted himself out of claiming exemption on that particular improvement. I was of opinion on both points that he could not claim exemption from rent; but a case has been stated for the Court of Appeal, and that case is still pending.

11105. It seems to me, of course, strange that the lease was said to be compensation where the rent was increased when the lease was given?—The way it stands is this: I will refer very shortly to a passage in the judgment of Sir Edward Sullivan in Adams *v.* Dunseath, where he deals with this very question.

11106. I should mention to you that the Ulster custom was admitted on this farm. It was different to Adams *v.* Dunseath?—The question (as you very rightly put) first treated it as a case not subject to the Ulster custom, or a case in which the tenant did not avail himself of the rights under the Ulster custom, and, secondly, treated it as an Ulster custom case. I propose to say a few words on both those heads. Treating it as one in which he was not claiming the benefit of the Ulster custom, and was going in, so to speak, under the 4th section of the Act of 1870 as to improvements, the Master of the Rolls, Sir Edward Sullivan, in Adams *v.* Dunseath, page 144, thus expressed himself: "On every break in the tenancy a state of things may undoubtedly occur which the Land Commissioners would have to consider as to whether it amounted to a compensation for the improvements otherwise than by payment. This state of things may mount up to a case where the new tenancy is granted and accepted expressly in consideration of the improvements being made, and descend to a case where nothing whatever is said

Mr. *M'Cartan*—continued.

said between the landlord and tenant on the subject; but where, from the terms of the new tenancy, it can and ought to be reasonably inferred that the new tenancy has been granted upon terms which fairly imply that the improvements were, either to the entire or partial extent, the moving cause to the landlord giving the new tenancy, no contract is, in my mind, in any way necessary towards getting at a 'compensation otherwise than payment' under the section; much less is a threat or menace of eviction on the part of the landlord." In the case you have referred to, in the first place the lease was granted expressly in consideration of the improvements already made, and then in one of the leases there is this express recital: "And whereas the lessee has recently erected on said premises a new dwelling-house with out-buildings, and has made other improvements on said premises. Now, it is hereby declared that this lease is made by the lessor to the lessee, specially in consideration of such buildings, and in satisfaction of such outlay, and on the understanding and agreement that on the determination of the term hereby granted, the premises hereby demised should be surrendered to the lessor, his heirs or assigns, without any claim in respect of such buildings, or improvements, or for or in respect of disturbance, custom, or otherwise, as aforesaid." Therefore on the face of the lease in this case the lessee took the lease as express compensation for the buildings, whether it was wise or not.

11107. Is not that contrary to the whole intendment of the 1870 Act, the policy of which was to prevent the tenant from contracting himself out of improvements?—Taking now, first, the larger case: in the larger case, in the first place as stated on the originating notice, the Poor Law Valuation was over 50*l.*, and even assuming that it was under 50*l.*, according to the reasoning of Sir Edward Sullivan in that case, no contract is necessary at all; if it was the moving cause of the landlord for making the lease, that is compensation within the meaning of Sub-section 9 of the 8th section of the Act of 1881. Then, in the second case, there were also buildings; the house had been erected by a previous tenant, Andrew Moreland, Senior, and the lease contained this recital:—"Whereas the said lessor and his late brother, Alexander Henry Halliday, Esq., agreed with Andrew Moreland, deceased (the father of the lessee) that if the said Andrew Moreland would erect a new dwelling house thereon (and which he did) they would execute to him a lease of the premises hereby demised at the rent for the term, and on the conditions herein contained, and also on the special condition that said lease should be accepted in satisfaction of such outlay, and on the understanding and agreement that on the determination of the term hereby granted the premises hereby demised shall be surrendered to the lessor, his heirs, or assigns, without any claim in respect of such improvements, or for or in respect of disturbance, custom, or otherwise, as aforesaid, and the lessee being now entitled to his father's interest in said house applied to the lessor to execute such lease and declares that he accepts the same on the terms and conditions aforesaid."

Mr. *M'Cartan*—continued.

In that particular case, according to the recital there, there was an agreement for what is called "valuable consideration"; that is, Andrew Moreland was to erect the house on condition of the landlord afterwards giving him the lease; and that is taken out of the provision as to contracting in the 4th section of the Act of 1870.

11108. The principal point I want to get out is this, that by the lease the lessee contracted that he should give over his house at the end of the term of 41 years to the landlord?—Yes.

11109. Then owing to the depression of prices and the cost of labour, in 1887 he came into Court to have a fair rent fixed, and when he came in to have a fair rent fixed that consideration which he was to give over to the landlord at the end of 41 years is taken from him then?—As having been compensated for.

11110. And a rent is fixed upon it?—The Court of Appeal has laid down in Barton *v.* Atkinson, Moylan *v.* Finch, Clement *v.* Tighe, and other cases, all of which are reported, that if a lessee avails himself of the Statute of 1887 he puts himself in precisely the same position as if his lease had determined; and if he chooses to avail himself of the Act of 1887 his rights, as to improvements and otherwise, are to be dealt with exactly as if the lease had come to an end.

11111. Would you not think that requires to be remedied?—That is settled in several cases by the Court of Appeal.

11112. And will require an Act of Parliament to remedy it?—It will require an Act of Parliament to alter it.

11113. Now as to town parks. I understand one necessary element is that the tenant should have been living in the town at the passing of the 1881 Act?—That is so.

11114. A curious case came before you of Martin *v.* Annesley, where the tenant happened to be in the lunatic asylum at the time, and it was held not to be a town park?—I thought that when the man was dying in a lunatic asylum at Downpatrick he was not living at Newcastle.

11115. So it depends altogether upon the residence of the man?—It did in that case.

11116. And not upon the circumstances of the holding?—Yes, it undoubtedly would have been a town park but for the circumstances mentioned.

11117. If he had been in his senses?—If he had not been carried away to Downpatrick and put in a lunatic asylum, but had been living there in 1881, it would have been held to be a town park.

11118. I want to direct your attention to what Justice O'Hagan said in reply to Question 1553 of the Cowper Commission, put by the President: "It seems to me somewhat unreasonable that one portion of land should be included and another excluded, simply because the tenant happens to live inside or outside the town?—(*A.*) I think if a change were to be made in the law that change might be made very much on the ground which your Lordship points to, namely, not to exclude the lands near the town, although they will, of course, be rated at a higher value." Do you think that would not meet the necessities of the case?—I think if any change were made in the law in that respect it would be greatly

Mr. *M'Cartan*—continued.

greatly against the interest of the tenants, because it would bring in a great many cases as town parks which have been hitherto excluded. I have excluded a number of cases on the ground that the tenant was not living in the town at the time of the passing of the Act, although living in the town at the time the rent was fixed.

11119. You did not catch my point. Justice O'Hagan seemed to have in his mind that rent should be fixed on all town parks, that the tenant should have security but that the landlord should be entitled to the best rent it was worth?—For the reasons I stated on a former day I do not see my way to recommend the inclusion of all town parks. I think it is dealing with holdings, a large number of which are not at all of an agricultural nature.

11120. But the result is that it leaves all these holders of town parks at the mercy of the landlord and subject to eviction?—They are subject to eviction, yes.

11121. Would it be any injury to the landlord if the Land Commission had power to fix the rents and give the landlord the best rent?—I think it would, and for this reason, amongst others: If agricultural rents (I am not speaking now of the amount of them) were fixed upon town parks, a man who had got one of these town parks might buy up two or three of the neighbouring town parks, you understand, and convert them all into one farm. There is no objection so far as he is concerned; but at present, as you know, very often town parks are allotted to particular houses in a town. I think the accommodation of the residents in a town would often be interfered with by an aggregation of a number of town parks into one large farm.

11122. Are you aware that the general rule in Ireland is (at least my experience of it is) that in the small towns in Ireland, the town parks, just like the farms, have been in the hands of the same families for generations?—Well, that varies in different parts of Ireland. In the north of Ireland, it is a very common thing to have the town park assigned to one particular house and going with the house, and whenever there is a change of occupancy in the house there is a corresponding change of occupancy in the town park.

11123. That is in the larger towns?—Yes, and it is very beneficial to the occupants of the houses in that way.

11124. The principal argument used against giving security to the tenant as regards these town parks, was that the landlord might require them for building purposes?—That only occurs in comparatively few towns.

11125. That only occurs in comparatively few towns?—Yes.

11126. That seems to be the chief argument against it?—That is one of the arguments; the other argument is the accommodation of the inhabitants themselves.

11127. You gave some evidence about the middleman. I think you said that in the case where the tenant of the middleman got his rent fixed at a smaller amount than the middleman had to pay himself, he usually surrendered?—The middleman might surrender. If the amount

Mr. *M'Cartan* – continued.

of the middleman's rent was larger than the aggregate rents received by him, he could surrender under the provisions of the Act of 1887.

11128. Of course in some cases, if he were a needy landlord, he would not have much interest in surrendering; he would like to get as much of the judicial rent as he could, and if he did not surrender within nine months of the fixing of a judicial rent his power to surrender was gone?—I think experience will tell you that middlemen who are losing will surrender on the very first opportunity possible; if the rents they are receiving are not equal to the rents they have to pay, they will not hesitate to surrender.

11129. Have you any notion of how many cases of surrender there have been under such circumstances?—No, I have not; some few cases have come before me, but not many. The usual way they come before us is when judicial rents have not been fixed on the entire holding, and then the middleman comes to us to fix a rent upon the portion which is not sublet, in order that he may surrender.

11130. The landlord in those cases has nothing to gain by immediate surrender; he has to gain by allowing his own rent to run behind, and getting as much of the judicial rents as he can of the tenants, and leave them to redeem?—Yes.

11131. Do not you think the law requires alteration in that respect?—Really it is a matter which I do not wish to express any very decided opinion upon; it would involve a great change in the law, which perhaps ought not to be confined to agricultural tenancies.

11132. Has your attention been called to the papers handed in by Mr. Bailey and Mr. Doyle with reference to agreements?—Yes.

11133. I find here, from the paper handed in by Mr. Bailey, that (in round numbers) the aggregate rents of about 650*l.* (which the tenants agreed to pay, and where the agreements were not filed) were further reduced by the Land Commission to 480*l.*?—Yes.

11134. In a paper handed in by Mr. Doyle, I find that in Cork, where rents were fixed by agreement to the amount of 135*l.* 10*s.*, they were further reduced by the Commission to 109*l.*?—Yes.

11135. Now, do not you think there would have been a hardship if these tenants had been held by the agreements when the Commission afterwards declared that the rents were excessively high?—I cannot see any difference between the position of those tenants who had entered into these agreements and that of persons who fixed rents in the County Court or before the Land Commission at that day. I have no materials before me to enable me to know whether the rents fixed by agreement and declaration were higher than they would have been if they had been fixed in the Land Commission or the County Court.

11136. The rents fixed at this time were very much lower than would probably have been the case if fixed by the same Commission at the date of the agreement, the alteration in prices had taken place in the mean time?—I, of course, have no knowledge of these particular cases, and I do not wish to express any opinion in reference to them.

Mr. *M'Cartan*—continued.

11137. We must take it that the rent fixed by the Commission was a fair rent?—A fair rent at the time at which it was fixed.

11138. Would it not be well that the tenants who got their rents fixed at the date of these early agreements, should be at liberty to come into court now?—I have no doubt that rents fixed by agreements and declarations a good many years ago are higher that the judicial rents that would be fixed by a Sub-Commission at present, but I cannot say anything more. I have really no idea in my mind as to whether the rents fixed by agreement and declaration are in any respect higher than the rents which were being fixed by the Land Commission at that time.

Mr. *Brodrick.*

11139. May I refer you to the 8th section of the Land Act of 1881, in which, in regard to fair rent, it is laid down that "the Court, after hearing the parties, and having regard to the interest of the landlord and the tenant respectively, and considering all the circumstances of the case, holding and district, may determine what is such fair rent"?—Yes.

11140. How do you interpret that expression "district." Do you hold that the Sub-Commissioners are justified in shutting their minds to prices given for sub-letting?—I think that merely refers to what would be fair rent in that particular district for the quality of land, not the question of sub-letting.

11141. When you come to "the circumstances of the case, holding and district," what do you say?—The circumstances of a particular case, of course, have to be taken into consideration, and and if the tenant, for instance, has sublet, with the consent of the landlord, the amount of rent he is receiving from his sub-tenants is a circumstance to be taken into account.

11142. But if you have a farm comparatively low-rented, which is brought into Court, which is side-by-side with one which a man has just taken at a higher rent, would not that be a circumstance of the district to be considered by the Commissioners?—I do not know; I could not express any opinion on that particular case unless I knew all the facts connected with; it might be perhaps a circumstance to show what a fair rent would be.

11143. Would you not consider it a guidance to the Commissioners in fixing a fair rent on one farm to know what rents were readily attainable for other farms in the same district?—I apprehend that they do know; that is what they say; that from their experience in that partlcular district, or from their experience in that particular county, they are able to fix what would be the fair rent of the farm.

11144. Does it not often happen that you send down a Sub-Commissioner who has no experience in that particular county?—I do not know that; I cannot say that; I never have anything to do with sending down the Sub-Commissioners.

11145. Who does that?— Mr. FitzGerald, who has been examined before this Committee already. He, under the distribution of business, assigns different districts to different Sub-Commissioners; he has a very great practical knowledge of the Sub-Commissioners themselves, and of the districts for which they are best suited.

Mr. *Brodrick*—continued.

11146. We have it in evidence from some of the Sub-Commissioners that they have been sent to districts with which they were not before acquainted; should not you, in such a case, consider that they were bound to take into consideration evidence which might be proffered as to the rents ruling in the district?—I think it would lead to an interminable investigation if the Sub-Commissioners were to receive evidence of the rents payable on all the estates round.

Mr. *Sexton.*

11147. Do you mean judicial rents?—So I understand. I understand the suggestion to be that they should receive evidence in Court of the rents, judicial or otherwise, that are payable on other portions of the same estate, or adjoining estates.

Mr. *Brodrick.*

11148. Would you not consider, having regard to Mr. Sexton's question, that it would lead to uniformity if they knew something of the judicial rents which had been fixed?—I do not think so.

11149. You do not?—No, I think that the rents that they would receive evidence in respect of, might be the full competitive rents. The rents might have been fixed, as I understand, out of Court; the rents have been fixed, not as fair rent, but fixed before the passing of the Act.

11150. But there are many cases, are there not, of rents fixed by agreement?—Yes.

11151. Rents which have been readily paid?—I believe so.

11152. Would you exclude the consideration of such rents in the same district under this section?—Whether the Sub-Commissioners take that into consideration or not I do not know.

11153. I rather invited your opinion whether it would not be a guidance to them?—I do not think so, for the reason that has been so often mentioned, namely, that the rents that were fixed at a certain period after the passing of the Land Act were certainly higher than the rents that would be fixed at present; and that was recognised by the Act of 1887 in giving abatements on those rents in certain cases. The Legislature by the Act of 1887 has substantially admitted that what was a fair rent at one time is not necessarily a fair rent at another time.

11154. Then your view is that if it is in the power of a landlord to prove that on a neighbouring holding the tenant has sub-let for 2 *l.* an acre, he is not to be allowed to produce that evidence?—I would reject the evidence myself, if it were tendered to me as not being material; I do not think that is any part of having regard to the "circumstances of the case," or the "holding" or "district," I do not think that is "circumstances."

11155. The "circumstances" of the "district"?—I do not think so; I think it is a particular circumstance affecting a particular holding which is not before the Court.

11156. Do you hold the same with regard to prices given for tenant right in the district?—Oh no. Are you speaking of out of Ulster?

Mr. *Brodrick*—continued.

11157. I am speaking of out of Ulster?—Very well; if it was on a question of true value, or specified value, we would receive evidence as to what had been paid for farms in the same district, for that is the only way we get any evidence at all of what the true value is.

11158. Would you consider it wrong for the Sub-Commissioners, under this section of the Act, to take into consideration the sums paid for tenant right in the district in fixing this rent out of Ulster. Let me put a concrete case. Supposing the landlord could bring and prove that on each of the farms on either side of the farm in question the tenant right had been sold recently for three or four times the value of the improvements shown on the farm; might not that be brought before the Commissioners as a circumstance of the "district"?—I think it would be a very misleading circumstance. My experience is that the sums which are paid are certainly extravagant sums, and often quite unconnected with the amount of the rent. You sometimes find, in cases in which the rent is low, a very large sum paid, and in cases in which the rent is high almost the same sum paid.

11159. Your view is that those extravagant sums should be checked?—If you could check them; but there is a difficulty in doing that.

11160. At the time of the passing of the Act it was stated by Mr. Gladstone—I am not going to examine you on this——?—I hope not.

11161. Mr. Gladstone stated that he believed "the object of the sub-section"—that is, with regard to specified value,—"is not to impose artificial limitations upon the value of the tenant right, but to enable the court to interfere if it should be of opinion that a price beyond the just and *bonâ fide* market value of the land that it is proper to give, and that a tenant can afford to give, has been offered through the pressure of that extreme competition which is said to prevail for the possession of land in Ireland." Do you consider that is carried out by the Act?—I will answer if I may take that as if it were a question of your own, put in your own words.

11162. I am quite ready to adopt Mr. Gladstone's language?—Without knowing anything about what Mr. Gladstone said in the House, we have always endeavoured to carry out very much the same thing as is expressed in this passage: that the "true value" and "specified value" are something under the full competition value. As I said before, the view we took was to fix it at such a sum, as far as we could make out, as a solvent tenant would give for the holding if held at a fair rent and be able to get some reasonable profit.

11163. Do you consider that the limitation in the price of the tenant right should be analogous to the limitation on the rent to be asked?—I have never considered the question, and I would not like to express any opinion about it, as to whether there ought to be any limitation.

11164. Does the power given you in the Act, of fixing tenant right, put you in the same position to fix that as you are in for fixing fair rent, that is to say, on the same principle, that it should be what a solvent tenant could afford to pay?—We treat it, as I have already said, as a sum of money which a solvent tenant would pay

Mr. *Brodrick*—continued.

for the holding if held at a fair rent, and be able to make a profit on it. I cannot define it more accurately than that.

11165. That is your view, at all events?—That is my view.

11166. Then I wanted just to ask you: How is it that, that being one of the functions of the Commission, the Sub-Commissioners decline very often to fix a specified value?—The Sub-Commissioners sometimes decline to fix a specified value on the ground that no reliable evidence of value is given.

11167. But it is not a right on the part of the landlord to have it fixed?—It is one of their duties to do it, but at the same time if no evidence is offered to them on the subject it is a matter that they may not be able to come to any conclusion upon. I have mentioned to the Committee already a case that came before the Land Commission on a re-hearing, in which the evidence was of such a contradictory and unreliable character that we were unable to fix the specified value.

11168. Do not you often have contradictory evidence with regard to the value of land which Sub-Commissioners have to fix a rent upon?—That is a different thing; it seems to me to be quite a different thing.

11169. As a matter of fact, under the Act do not you think the Sub-Commissioners are bound to carry out the Act and fix a specified value?—Whenever they have the materials to do so; but if they have not the materials, I do not think they are.

11170. Is it not possible where they have no materials for them to fix the tenant right value at *nil*?—If they have no materials before them upon which they can fix a specified value, no evidence as to what farms are being sold in the neighbourhood, or no evidence at all in connection with that particular holding, I think they would run a very great risk in fixing the specified value.

11171. If there are no improvements, and farms are not selling in the neighbourhood, surely would they not be justified, not in declining to fix a specified value, but in stating that there was not a specified value under the Act, would not they be justified in doing that?—I am not aware that in recent times they have refused to fix it in many cases. As a matter of fact, the first judicial Commissioner, Mr. Justice O'Hagan, in one case where he and his colleagues refused to fix a specified value, offered to state a case for the consideration of the Court of Appeal as to whether the duty under this particular sub-section was mandatory or not; and no case was stated.

11172. You do not consider that the words, "the Court may fix" (which is a point Mr. Sexton has raised) means "the Court shall fix?"—That is precisely what I was mentioning. Mr. Justice O'Hagan held that he did not consider it to be mandatory, and he gave, or offered, a case to the landlord, and the landlord did not proceed with the case to the Court of Appeal.

11173. Going on the question of refixing the rents at the end of a judicial period, you told Mr. Sexton that you did not see any means of fixing them by a scale of prices?—So I understand; in that

Mr. *Brodrick*—continued.

that respect, of course, I am guided greatly by the opinion of experts and valuers.

11174. Then you mentioned that to some extent in refixing the rent at the end of a judicial term, the Sub-Commissioners would have to be guided by improvement or deterioration in the farm?—Yes, certainly.

11175. Would you explain that a little more fully?—I mean when the time comes to refix the rents, they will have to consider what would then be a fair rent for the farm. If, on going to the farm, they find that the tenant has grossly deteriorated it; for instance, by constantly over-meadowing or over-cropping, they would take that into consideration; if, on the other hand, he has permanently improved the character of the soil by judicious treatment, that is to be taken into consideration also; and if he has made other improvements in the way of drainage or reclamation, fences or buildings, all those have to be taken into consideration.

11176. How would that operate, putting it in figures. Supposing a farm had been fixed at 50*l.* a year in 1881, and had been gravely deteriorated by over-meadowing and so forth, what would be the course; would the course be to fix the old rent, or the rent having regard to the position the land ought to have been in?—When they come to refix rents they fix them *de novo* as what they consider at that date would be a fair rent of the holding, having regard to improvements and all other circumstances, and not necessarily to assume that the original rent is to remain, plus improvements or minus deterioration. They would have to fix the rent and then consider, having regard to the then ruling prices and so forth, what would be a fair rent for the holding.

11177. I quite follow you, but would not that have the effect of giving the tenant the benefit of his deterioration?—Certainly not; the tenant never benefits by his deterioration. The Sub-Commissioners tell us, and I have no reason to disbelieve it at all, that when a farm is deteriorated they fix the rent, not on the deteriorated value, but on what would be the normal condition of the soil.

11178. In question 10418 you suggest that the moment the originating summons is issued you should send down one of your Sub-Commissioners or Court valuers to examine the lands and investigate the expense of improvements, and report to you on the several matters you mentioned in your evidence, and report what a fair rent should be, and that you (the Land Commission) should then make a conditional order fixing the rent at that amount, and serve that on the parties. Now, does that indicate that you would only simply take the valuation as presented to you and make a conditional order at that sum, or would you consider the rent?—My present idea is (of course it is only *in petto*, so to speak) that whatever is put down there in figures as being a fair rent we would fix conditionally as the fair rent if we saw that it corresponded with the other particulars that were given in the report. We would have the gross value of the lands; the various deductions from it, the various additions, and so forth, and we could check all these, and if the sum which the Sub-Commissioner put down for a judicial rent was apparently the right sum, we would make a conditional order and fix the rent at that sum.

11179. Supposing, in your opinion, it was not the right sum; supposing that you thought it too high or too low, what would you then propose; I only want to get your scheme?—We would have no materials before us to give us any idea whether it was too high or too low; the only thing that would be before us would be the report of the Sub-Commissioner, and we would accept that as being the report of a perfectly impartial man who was an expert in these matters.

11180. Then would the effect be simply that you would be completely guided by the expert, and that in that case the Sub-Commissioner might just as well report to any member of the Committee, because he could make the Order just in the same way without your authority?—You are quite right. Our functions, as far as making the conditional Order is concerned, would be merely administrative, and not in any sense judicial. The Head Commissioners, as they are sometimes called, would not take the case into consideration, properly speaking. The particulars would be checked by some clerk, or somebody of that kind, and then the conditional Order would be made. If either party was dissatisfied he would go in before the Sub-Commissioner in precisely the same way as at present.

11181. I want only to get at whether there is any modification in your procedure suggested?—I should be very glad if we could get anybody to make suggestions that would simplify it, or enable us to fix rents in a more satisfactory manner.

11182. Would it be possible for you to hear the valuer in cases; you would have before you the old rent, the remarks on the report, the valuation, if you take that into consideration at all (I mean by the "old rent" the "old judicial rent") and the new judicial rent proposed, and the improvements which he has put before you; would it not be possible for you to exercise some authority in the matter; that is to say, to hear the valuer and examine him; ask him any questions on any point which seemed to you very abnormal before you made your conditional order?—I do not think so. In the first place, owing to the vast number of cases, I think it would be quite unworkable. I do not think we could possibly have the time and opportunity; and the cases would fall tremendously into arrear.

11183. You think it must be simply the registration?—It would be also a most unsatisfactory kind of investigation, because in the end we should rely practically on his opinion.

11184. It amounts, does it not, to this: that you propose a procedure which would really make you only a registration Court?—In the first instance.

11185. In the first instance?—I mean to say it would be like a hearing before one Sub-Commissioner, instead of three Sub-Commissioners in the first instance—a hearing on the land—an investigation on the land, of the materials necessary to fix a fair rent.

11186. Now I will ask you rather a delicate question; but it is very important: Do you think that you could select valuers who, upon

Mr. *Brodrick*—continued.

the whole, would be men of greater experience than the Sub-Commissioners who would naturally try the case; that is to say, that you could pick out of the whole body special men whose opinions would carry weight?—Really, my own personal opinion is that all the Sub-Commissioners that we have at present are men whose opinions ought to carry weight, and that they are, in their way, most thoroughly impartial; and I would not like to select one man more than another.

11187. Then practically it amounts really to what I said just now, that you propose a hearing before one Sub-Commissioner, as you call it?—On the land.

11188. On the land?—On the land, a valuation on the land, without the necessity of taking evidence in any formal way; and the main object, I need hardly say, of making that suggestion, is to save the enormous expense both to landlords and tenants, and to try and avoid, if possible, the necessity of a hearing, and I think that would be so.

11189. Quite so; but the whole point of the matter is, whether these valuations would be accepted in nine cases out of ten, or whether they would be contested in nine cases out of ten?—Certainly.

11190. With regard to town parks, you spoke of a population limit as being, in your opinion, the only limit which could be now adopted?—I think it would be a good practical way of settling the question.

11191. Have you any suggestion to make as regards a population limit?—No, I have not; I would rather not make a suggestion on a ques- of that kind.

11192. You think that that we must worry out for ourselves from the evidence?—I would not put a very high population limit; I mean to say not very high.

11193. Do you mean you would not go to four figures?—I wish to express no opinion as to what the population limit should be.

11194. But your opinion is very clear, that town parks, whatever limit is suggested, should be excluded from the Act?—That is my personal opinion.

11195. With regard to English-managed holdings, you stated yesterday, I think, that only one single case of that kind of holding existed?—Oh, no, no; what I stated was that during my tenure of office I have never excluded any holding as being an English-managed estate. Some three or four cases were brought before me, not more, and in none of these cases was it proved that they came within the definition of an English-managed estate; on two of them, perhaps, all the improvements had been made by the landlord; but on none of them had the improvements been maintained by the landlord. There have been other cases before the Land Commission long before my time.

11196. You have suggested amendments of the law in some cases; do you think there are cases in which the words "and maintain" have operated prejudicially?—I do not know; I have no knowledge on the subject.

11197. It has been stated to us that efforts have been made in some cases to subpœna the Sub-Commissioners, with a view to having them

Mr. *Brodrick*—continued.

examined in Court as to the grounds upon which they arrived at an estimate of the judicial rent. Do you see any objection to this course?—I see the strongest objection. They are persons who are placed in a judicial position, and it would be utterly inconsistent with that position that they should be treated as ordinary witnesses. An attempt was made to get the Court of Appeal to issue a subpœna in a case of that kind, and they gave no countenance to such a procedure.

11198. As a matter of fact, they cannot now be subpœnaed, can they?—They cannot be subpœnaed; and if they were subpœnaed before me I would decline to let them be examined.

11199. Just with regard to sub-lettings; you did not wish to state any limit with regard to sub-letting, but you were treating, were you not, of a very large holding with a small sub-letting?—I was treating, I will not say of any very large holding, but a holding in which, of the total amount, the fractional portion sublet would not be very large.

11200. We had it in evidence from Mr. Greer that he thought great dissatisfaction existed where a man with 20 acres had got two sons who had been working upon the holding, and was not able at his death to divide the holding between the two; that was not a class of sub-letting you had in your mind?—I myself disapprove of that sub-division, because, generally speaking there is not capital to work the farm as two farms, and if you allowed sub-division in that case you would have to allow further sub-division, probably, of the one half of the farm.

11201. I want to ask you one question with regard to instructions to Sub-Commissioners. Under the Act no instructions were given, I understand, to Sub-Commissioners before they were sent over Ireland?—None, for the reasons stated by Mr. Justice O'Hagan and his colleagues in that report that I have referred to already.

11202. Would you regard it as undesirable, not that instructions should be given, but that matters should be laid down on which it would be the duty of the Chief Commissioners to instruct the Sub-Commissioners?—I think it may be desirable that Parliament should lay down certain rules, but I do not think the Land Commissioners would be a suitable body to give directions to the Sub-Commissioners on questions of valuation. If you mean to instruct the lay Sub-Commissioners on questions of value they are much better qualified to instruct the Head Commission on questions of value.

11203. What were the rules you were thinking Parliament should lay down and on what points?—I mean to say, if Parliament chooses to lay down certain principles of valuation to be adopted in every case, let those be laid down; but I do not think the Land Commission should be called upon to give any instructions in valuation to lay Assistant-Commissioners and Court valuers.

11204. But you answered many questions; for instance, of the occupation value of a holding?—Yes, that is a question of law.

11205. Do you think in a case of that kind, that in each the Land Commissioners should wait until the question arose, to decide it?—Certainly.

Mr. *Brodrick*—continued.

tainly. I have the clearest opinion upon that; it is like a question on any other legal point that is likely to come before a Sub-Commission. If the question arises, let it be raised by some party and brought before the Land Commission, and then, if necessary, taken to the Court of Appeal.

11206. But is it not the case that whichever way the decision goes in the Land Commission, all the rents which have been fixed before that decision must for 15 years necessarily suffer by it one way or the other?—I do not know; I do not think so. It may turn out that the occupation value is a very small thing.

11207. I beg your pardon, I did not mean the occupation value, I meant any legal point. Is not the case peculiar in this way, that if the point is decided in favour of the landlord, he, of course, may be assumed to get less rent; if decided in favour of the tenant, he has to pay more rent, in the cases which have been decided by the Commissioners finally before this point is raised?—I really do not follow you.

11208. If in the year 1883 a legal point is brought up subsequent to the fixing of, say a couple of thousand cases, or 20,000 cases, all those 20,000 cases have not had the benefit of it one way or the way?—You mean a ground of exclusion?

11209. Yes?—Certain cases have been included originally that might be excluded now, and *vice versâ*, some cases might be included now that were excluded originally.

11210. Therefore you do not think it possible to lay down any definite rules?—Certainly you cannot lay down any definite rules on questions of law, you must wait until the question arises; then it must be decided by whatever the tribunal is that is intrusted with the decision.

Mr. *T. M. Healy.*

11211. Will you turn to Question 3477 of Lord Justice FitzGibbon's evidence, the case of Howell *v.* Briscoe?—I know the case perfectly.

11212. The learned Lord Justice says, as to the difference between a present and future tenant, that the Land Commission held that this man who held under a lease beginning on the 1st January 1883, was a future tenant; but that the Court of Appeal said: "No; the tenant was occupying, before the 1st January, under a contract of tenancy made before that day, and he was entitled to his fair rent?"—The Lord Justice's recollection is at fault in that; it is just the reverse. Mr. Justice O'Hagan held that it was a case that came within the Act, that the tenancy was created in the year 1882; and the Court of Appeal decided that, inasmuch as the term did not commence in possession until the 1st January 1883, it was outside the Act; so that it was the Land Commission that put the man in, so to speak.

11213. And the Appeal Court put him out?—It is a reported case.

11214. Have you got a revised proof of the evidence?—I understand this is a revised proof.

11215. The revised proof maintains the original inaccuracy apparently?—It is exceedingly difficult for any judge, no matter how eminent,

Mr *T. M. Healy*—continued.

to retain all these cases in his memory. I think it was a very wonderful thing that the Lord Justice was able to give such an accurate account of most of the cases that came before him.

11216. It was equally wonderful on Mr. Bailey's part, I presume?—Yes.

11217. Before I come to other matters, Mr. Brodrick asked you with regard to the opinion expressed by Mr. Gladstone in 1881?—I know nothing of that.

11218. I wish to ask you whether this view of the Act, as put by Mr. Gladstone, has been maintained: "In the Act of 1870 we did, in respect of the tenant, recognise the principle that he might be compensated by a reasonable lapse of time in respect of improvements he had made, and that the use and profit of those improvements for a certain time might be considered as compensation; but we do not recognise that principle in the present Act; none of the enactments of the present Bill are founded upon that principle. It is much better, I think, that those who make the improvements should have the whole benefit of the improvements." That principle has not been carried out, has it?—That is not carried out; but that is one of the points decided in Adams *v.* Dunseath; and the last clause of Section 4 of the Act of 1870 is still applicable to fair rent.

11219. That speech was on the "9th August 1881." Now the "15th August 1881": "It was nothing short of impossible that the Court should imagine, or adjudge, that to be compensation by the landlord which had never cost the landlord in any shape, in money or money's worth, a single farthing." That is not the law, as it is administered now, is it?—No.

11220. That has not been found to be "impossible"?—Since Adams *v.* Dunseath, that is not the law.

11221. I wish to ask you with regard to these words "enjoyment of improvements," whether any definition of "enjoyment" exists either in the Acts either of 1870 or of 1881?—No; no definition.

11222. And do you take evidence as to "enjoyment," or do you leave it to inference?—As a rule, the evidence of "enjoyment" is merely possession, and the possession of the holding with all its advantages.

11223. Would "enjoyment" mean that a man had succeeded in making a living or a competence out of it?—I do not think so; I think it merely means that he was in possession, and what we would properly call "enjoying it," because I do not think any other word expresses it so well.

11224. Suppose you found a tenant of a few acres living in rags on a mountain side, would "possession" mean "enjoyment" of his holding?—That is a play on the words, I think. He would be in "enjoyment" of the holding, an "enjoyment" within the meaning of any Statute that referred to such an expression.

11225. Then you take "enjoyment" to be "occupation interest"?—I take "enjoyment" to be the being in possession of a holding with all the advantages that are attached to it in the way of improvements.

Mr. *T. M. Healy*—continued.

11226. Is the "enjoyment" and the "tenant-right," then, the same thing?—No.

11227. Is "enjoyment" and "occupation-right" the same thing?— No ; I do not think so. I think it is quite a different thing.

11228. No case has been stated as to the meaning of the word "enjoyment"?—No.

11229. Do not you think, however, it is a very potent word in the section?—I do not think so; I think it is an ordinary English word, to be interpreted with its ordinary dictionary meaning.

11230. The word "improvement," however, has not been interpreted in its ordinary dictionary meaning?—No; because the word "improvements" is defined by the Act of 1870. By the incorporation of the Act of 1870 with the Act of 1881 its meaning is fixed in the Act of 1881.

11231. But there being no definition of the word "enjoyment" in the Acts, has there ever been a judicial definition of "enjoyment"?—No; not that I know of.

11232. Do you think it would be desirable or possible that we should have from the judges a definition of what "enjoyment" means?—I think it would be very difficult to raise the question so as to ensure a decision.

11233. Could you not, in the same way as a case was stated on the word "improvements," state a case on the word "enjoyment"?—I do not know what answer could be given to it, except that "enjoyment" is enjoyment.

11234. Whereas the word "improvements" does not mean improvements?—No; "improvements" means certain matters so called in the Act of 1870, improvement works, and tillages, and manures.

10235. You are clear that "enjoyment" and "occupation right" are different?—I do not think they are the same; they do not appear to convey to me the same idea at all.

11236. This was put to you by Mr. Sexton (Question 10542): "If any litigant should now bring an appeal to you upon the ground that the Sub-Commissioner, in fixing the rent, did not make a deduction for his occupation right; and if you find that to be the fact, would you reduce the rent upon that ground"? and you stated: "I would, and what I would do in a case of that kind would be, I would state a case for the Court of Appeal as to whether it was the proper thing to do"?—Yes, I think so.

11237. Supposing it was alleged that you took a wrong view of "enjoyment," would you be prepared to give a case?—I would certainly state a case. If any Counsel came in before me and said he thought it was a serious question, I would state a case; but I think there would be very great difficulty in getting any decision on the point.

11238. At Question 10215, in reply to the Chairman, you say: "If, for instance, he has reclaimed land, he is given an annual allowance that will exempt him from rent in respect of the expenses of reclamation; but the actual capital value of the reclamation remains his property still"?—So I understand.

11239. Further on you say: "The only thing that the Land Commission is to take care of is that he gets a full and ample allowance in respect of it, so that he is not to be rented in any way for the improvement work." You adhere to that view?—Yes, that I consider to be the law.

11240. And you think that has been carried out?—I think so.

11241. And later on, Question 10226, you say: "I humbly express my opinion that nothing short of legislation could transfer any of the improved letting value to the tenant over and above this annual allowance that is made to him in respect of his improvement working; that no decision of the full Court of Appeal, even if it was composed of seven members, could transfer property which originally was not the property of the tenant to the tenant"?—I think that is so. That is precisely the view that was taken by the Lord Chief Baron in Adams *v.* Dunseath, page 157 of the Report: "In my view it was not intended by this sub-section" (that is Sub-section 9 of Section 8) "to provide that the Court should not have regard to the interest of the landlord, or to transfer to the tenant any part of that interest either in the holding, or in the improvements thereon."

11242. Now Judge O'Hagan, when he was examined before the Lords Committee, made this statement; I only want to ask for an explanation of it, not in any way in order to criticise your view or his, but to ask if you can understand his answer, because I cannot. He says (Question 3743): "Then upon the interpretation of that sub-section alone, the Court of Appeal decided, in accordance with the decision of the Court below, that the enjoyment during the currency of a lease was not compensation by the landlord; but then they further decided that the sub-section of Section 4 of the Act of 1870 applied to Healy's clause in estimating a fair rent, and that I apprehend would take effect whether the enjoyment was during a lease or outside of it"?—I follow you; I am just trying to take in that. I have always considered the law to be, as laid down in Adams *v.* Dunseath, that the enjoyment of improvements made pending a lease, during the lease, cannot be a compensation in any way.

11243. That is what I have always understood, but I have equally understood that in the case of improvements effected during the currency of a tenancy from year to year enjoyment does compensate to some extent?—It may.

11244. It may compensate?—It may compensate.

11245. What does the learned Judge mean here, if you could tell me, by saying that the Court of Appeal "further decided that the sub-section of Section 4 of the Act of 1870 applied to Healy's clause in estimating a fair rent, and that, I apprehend, would take effect whether the enjoyment was during a lease or outside of it"?—I apprehend what he must have been referring to is improvements made before the execution of the lease, that enjoyment during the lease might amount to compensation. I only suggest that that is what he might mean.

11246. Does it not seem to point to this, that in his view Adams *v.* Dunseath affected improvements made during the lease, as well as improvements made during the occupancy of the tenancy from year to year?—I should say not. The Judge knew the decision in Adams *v.* Dunseath

Mr. *T. M. Healy*—continued.

so thoroughly that he would not have made a statement which seems to me entirely counter to the decision in Adams *v.* Dunseath. Of course I cannot pretend to explain what he may have had in his view when he gave that answer.

11247. Then, as I understand, any improvements made during the currency of a lease are excluded from rent?—Yes, unless in special cases in which there is a contract.

11248. That is pending the lease?—Yes.

11249. But on the expiration of the lease, how does the law now stand?—On the expiration of the lease, I apprehend it would be the same.

11250. Then it is your view that if a man makes improvements during the lease, not only he cannot be rented on these improvements during its currency, but that on its expiration and on the springing up of a yearly tenancy thereafter, these improvements are equally exempted from rent?—I may answer that, perhaps, in one way; I have never considered the case, but that seems to me to be the fair interpretation.

11251. The reason I ask the question is this: of course, I know it is very inconvenient to ask you with regard to these series of Villiers Stuart cases; I apprehend you have not the facts altogether in your mind?—I have some of them. It shows the inconvenience, as you say, of asking such questions, because on the last day I was here I attempted to recollect the facts of this case, and I made a statement in reference to the evidence of value given, which statement was utterly erroneous it seems, as to a written valuation having been handed in, and I must have been considering some other case; it shows the difficulty of re-trying a case before this Committee.

11252. I only wish to ask you so far as your view bears on these facts, and not anything in the nature of cross-examination on the case itself; I hope you will understand that?—I know what you mean.

11253. Now, according to the shorthand notes, Patrick Moore was an Irish-speaking tenant, whose evidence was interpreted for him?—Yes.

11254. And his whole holding was rented at 2*d.*, not 2*d.* an acre?—Apparently. In reference to that smaller holding, a lease similar to the lease in the two other cases was produced; but those acting for the landlord failed to identify the lands with the lands that were in the occupation of the tenant, the lands mentioned in the lease. The evidence was that he or his father had held this holding at 2*d.* a year for a long number of years.

11255. Were not these improvements apparently made during the currency of that lease?—No; my idea was that they were made before.

11256. Before the lease?—Yes, in all the three cases.

11257. And therefore it corresponded to the house in Adams *v.* Dunseath?—Yes. In the first place the evidence I think was chiefly to be derived in the two other cases from the description of the lands, they were described as the dwelling-house and that part of the mountain lands of Slievegriene called Rusheens, "enclosed and cultivated by the said Michael Costine." They had been enclosed and cultivated at the date of the lease, and the Court valuer pointed out to us, that on examining the Ordnance Survey of the land, which had been surveyed in 1840, he found that the lands were in precisely the same condition as to fences and otherwise as they are at the present time, and any reclamation that was done must have been done before the Ordnance Survey was made.

11258. Assuming that those improvements were made before the lease, and therefore that the case was in the same position as the house of David Adams, which Adams *v.* Dunseath decided might be rented, was not that view in Adams *v.* Dunseath held by four judges to three?—The view I took in this particular case, you will understand at once without re-trying the case, is this: Whether rightly or wrongly I took in the two cases in which there were leases and as to which there was no question at all, that the granting of the lease at a nominal rent (6*d.* a year) for the term of the life of the lessee (which lasted, in fact, in each case for 50 years) coupled with the enjoyment during that 50 years was complete compensation, and that it was not necessary in such case to show that the tenant had been repaid the actual amount in money constituting the value of the reclamation.

11259. First, was not the renting of the house in Adams *v.* Dunseath done by a majority of four to three?—Yes, that is on the special circumstances of that case.

11260. And was not one of the judges who formed part of that majority overruled by the others on the reasons that he gave?—That all appears from the Report; it is not for me to comment on the judgments of the judges in the case.

11261. I ask you, as a matter of fact?—As a matter of fact, I believe that is so.

11262. Therefore, apparently, how can any legal tribunal construe Adams *v.* Dunseath on that point?—They can construe it on all the other questions except, perhaps, on that question as to the house.

11263. But is not this case of Patrick Moore's, on the Villiers Stuart Estate, that case over again?—No, not at all; it is on another principle altogether; it is on the question of the applicability of the last Clause of Section 4 to the fixing of a fair rent, and on that the judges were six to one. Six to one were of opinion that you should take into consideration that last sub-section of Section 4 of the Act of 1870, which said: "Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court, in awarding compensation to such tenant in respect of such improvements shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantages of such improvements, also the rent at which such holding has been held, and" (and especially then) "any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made." Whether right or wrong, I, and one of my colleagues, were of opinion that the granting of the lease was a benefit which the tenant had received from the landlord for the improvement, and that that, coupled with the

Mr. *T. M. Healy*—continued.

enjoyment of the improvement during the term, wiped out any right to compensation.

11264. But I apprehend that your construction of the law has an equally important effect, because it gives the go-by to the decision of the majority of the judges in Adams *v.* Dunseath as to the ownership of the improvements made before the lease?—I do not think so.

11265. Will you allow me to put this to you: Four judges in Adams *v.* Dunseath decided that the house of David Adams granted before the currency of the lease passed to the landlord: You decided in the Villiers Stuart case, apparently, that although these improvements were made before the granting of the lease, the improvements remained the tenant's, but that the landlord was entitled to rent upon them because of the "enjoyment thereof" by the tenants?—And by the granting of the lease itself, just in the same way as was put to me by Mr. M'Cartan awhile ago in Mr. Harper's case. There in that case, there was an express contract on the face of the lease that the lease was made in consideration of the improvements that had been so made. As the Master of the Rolls said in the passage I have already cited, it is not necessary that there should be actually a contract. The existence of the prior improvements was "the moving cause" there, and a compensation otherwise than by the payment of money.

11266. I may take it, however, that practically the go-by is given to the majority of the judges in Adams *v.* Dunseath that improvements made before the lease passed to the landlord?—Under certain circumstances they may pass.

11267. So that Adams *v.* Dunseath has been riddled upon that point?—I do not think so.

11268. Here you admit that though these improvements were made by the tenant before the granting of the lease, yet you did not hold that they passed to the landlord?—We did hold that they passed. We held that the tenant was compensated for them by the granting of the lease and subsequent "enjoyment."

11269. The two together?—I think that very possibly we would have been justified, if we had so thought fit, to hold that the mere granting of the lease was sufficient to cancel any right for compensation for improvements.

11270. Suppose the "enjoyment" section was not in the Act of 1870, would you have acted in the same way?—No, certainly not. The decision, you understand, is founded solely on that last clause of the fourth section of the Act of 1870.

11271. Solely?—But for that certainly we should have treated these as tenant's improvements.

11272. This tenant, Moore, applied, in the first instance, by originating notice, dated the 24th February 1892, to the County Court?—I believe he did.

11273. The landlord, on the 10th March 1892, served notice to transfer the proceeding to the Land Commission?—And it was transferred as a matter of course.

11274. And there is a certificate of the Clerk of the Peace that if it had not been transferred it could have been heard in the County Court on the 18th April 1892?—I suppose that is so.

Mr. *T. M. Healy*—continued.

11275. And as a matter of fact, when was it heard?—As a matter of fact, the Order of the Sub-Commission was made in December 1893.

11276. So that very nearly two years elapsed before the fair rent was fixed?—Yes.

11277. That transfer you speak of is made as a matter of course?—Yes, that was the view that Mr. Justice O'Hagan took, and it has been followed ever since.

11278. And in granting these motions no stay is, I presume, put upon any proceedings by the landlord to eject the tenant?—Yes.

11279. Did you put a stay in this case?—It is made in the usual form. I do not know whether the Order is here or not. There is a regular settled form. There was no cause shown. I find in none of these cases cause was shown to stop the Order.

11280. In this case no stay was put upon the Order?—Apparently not.

11281. And if the tenant wants to have a stay put upon the Order, he has to instruct his legal advisers to come into Court and make that motion?—Yes; and in my experience, we have had no such motions because proceedings are not taken. I mean to say it may be a theoretical grievance, but I do not think it is a practical one.

11282. You do not think it is a practical grievance?—I do not; and whenever any cause is shown we always now make it part of the Order that no proceedings are to be taken without the sanction of the Land Commission.

11283. The Sub-Commissioners fixed the rent on the old rent of 18*s.* 9*d.*?—In the first case.

11284. It had been raised from 6*d.* to 18*s.* 9*d.*?—That is so; yes.

11285. They state this on their Report: "Elevation 550 feet. Considering the position being exposed to the sea, not a good water supply. Entire holding was evidently poor, wild mountain, and will require continuous outlay in the shape of labour to prevent its going back to its normal state of furze and heath"?—That is so. You will observe that the holding was inspected by Mr. Mackenzie alone. It was during the time of Mr. Trench's serious illness that the rent was fixed, and it was fixed without the presence of a legal Commissioner. Mr. Walpole was associated with Mr. Mackenzie, and signed the formal Order, but he took no part in the inspection.

11286. But it was fixed at the rent the landlord himself had fixed?—That was fixed about 35 years ago.

11287. If that is so, then the file is wrong, and I take it the file must be wrong?—Yes. I have taken a note from my own record of the evidence that was given in the case, and I think you will find it is so.

11288. I take it that the file must be wrong, because it is stated here that the landlord raised the rent from 6*d.* to 18*s.* 9*d.* in 1884?—"1884"? It was 1874.

11289. If it took place in 1884, the rise would have attracted statutory conditions, and he could not have come into Court at all?—He said that his father died about 35 years ago. Upon the father's death the old lease apparently fell in and the rent was raised to 18*s.* 9*d.* from 2*d.*

11290. 1874,

Mr. *T. M. Healy*—continued.

11290. 1874, when this rent was raised, was the high-water mark of prices and of the value of land in Ireland, was it not?—We took it that the landlord had only fixed a very moderate rent, in consideration of the improvements that had been made.

11291. The rent of 18*s.* 9*d.* was the landlord's own fixing? — Yes, and whether rightly or wrongly, the view we took in that particular case was, that we thought the landlord, in consideration of the improvements that had been made, fixed a rent which was far below the value.

11292. But it was the landlord's own rent?—It was the landlord's own rent.

11293. And the Sub-Commission fixed the rent at the old rent of the landlord?—Yes, and if I may say so, it was a very disastrous thing for the tenant to have served an originating notice in the case, for if he had not served the originating notice, the rent would have gone on apparently at 18*s.* 9*d.*

11294. That is what is called the "Benefit of the Land Act"?—Yes. The tenant foolishly thought he could reduce the 18*s.* 9*d.*, but instead of that he had his rent raised to 30*s.*

11295. The landlord appealed from his own rent of 18*s.* 9*d.*?—Yes.

11296. And you raised the rent to 30*s.*?—We raised the rent to 30*s.*

11297. And ordered the tenant to pay costs?—And ordered the tenant to pay costs.

11298. You say that there the Sub-Commission Court had no legal Commissioner attached to it?—No.

11299. But you sent down a valuer?—We sent down our two valuers, Mr. Lynch and another gentleman.

Mr. *T. W. Russell.*

11300. Who was the other gentleman?—Mr. Headech.

Mr. *T. M. Healy.*

11301. Have these valuators any instructions on legal points?—No; but one of them, Mr. Lynch, happens to have legal qualifications also.

11302. They value the land as they find it?—They did, and they reported specially in that case on the question that evidently arose.

11303. I am asking you as a matter of fact: Do your valuators in every case, (that is the Appeal Court valuators) value the land as they find it?—As a rule they do.

11304. Irrespective of tenants' improvements?—They value it, taking the improvements into account, of course. They take the improvements into account where improvements have been allowed by the Sub-Commission.

11305. Have they any notes of the Sub-Commission evidence before them?—None, absolutely none; they have only got the pink form.

11306. Now here are the valuators' reports?—Yes.

11307. "This holding was at some period reclaimed from mountain," (this is the appeal valuer) "but as appears from the Ordnance Map, all works of reclamation and fencing were executed prior to 1840, the lands shown on the map of 1842 being exactly as they now appear.

Mr. *T. M. Healy*—continued.

The lands appear to have been held for a considerable period prior and subsequent to 1840, at a nominal rent; and under these circumstances, we leave it to the Court to decide what allowance (if any) should be made for such reclamation." They also say, "This is a mountain holding, having been at some period reclaimed and brought into cultivation. The aspect is about south and the elevation 500 feet. There is no water in summer, and water at that season has to be drawn about a quarter of amile. The approach is by an old Board of Works road, not kept in repair," and they say that, "the holding is suitably used, and well farmed, and shows improvements"; they say the buildings are the tenant's?—Yes.

11308. Now, the tenant proved, from his evidence apparently, that he had built the house, built a cow-house, a fowl-house, stable, and piggery, piggery yard, pier, and iron gates, and he reclaimed seven acres, no roods, and 15 perches?—Yes.

11309. And Mr. Villiers Stuart, the landlord's agent, son of Captain Stuart, put the value of the reclamations at 10*l.* an acre?—Yes, so he said.

11310. Now, when it is admitted under these circumstances that the holding will require continuous outlay on labour to prevent its going back to its normal state of furze and heath, what is the "enjoyment" that that tenant had for his improvements?—Apparently, according to the valuation of the Court valuer, he had a holding which was worth 2*l.* a year, if the improvements were not taken into account.

11311. Do you say, as a matter of fact and law, that the appeal valuator values irrespective of improvements or plus them?—In this particular case, on account of the circumstances that were brought to the notice of Mr. Lynch, he valued irrespective of improvements, as he says in that case.

11312. Does he say it?—Yes. Take one of the other cases.

11313. One moment; I will stick to this for the present. Let me ask you this question: Have the valuators any instructions as to their valuation?—I do not think they have any special instructions, because they have all been Sub-Commissioners, and they act precisely in the same way as Sub-Commissioners.

11314. They have no instructions?—No special instructions that I know of.

11315. They have not heard the evidence about the improvements?—No.

11316. They are armed with nothing except the pink paper?—That is so; and then they give notice to both the landlord's and the tenant's representatives, and are met on the land and all improvements are pointed out.

11317. I do not wish in any way to extract an answer from you, but do you say that in this case, in fixing the rent by the valuators at 2*l.*, they took improvements into consideration?—Certainly not.

11318. They did not take the improvements into consideration?—They did not take the improvements into consideration; if they had taken the improvements into consideration their valua-

Mr. *T. M. Healy*—continued.

tion would have been very much less, I have no doubt. Mr. Lynch there says, "leaving it to the Land Commission to decide whether the reclamation should be allowed or not."

11319. I thought that would be so. Then the fair rent of the holding, *cum* improvements, was 2*l.*?—Yes, if improvements should be allowed.

11320. That is to say these valuators valued this land at 2*l.*, with the improvements?—£2 with the improvements.

11321. And the only "allowance" that you made to this tenant for his 50 years of toil for making the land what it was, the whole of which was only worth 6*d.* rent, was to increase the rent to 30*s.*?—We thought, whether rightly or wrongly, that, having been "enjoying" it for more than half a century at what was little more than a nominal rent, his right to improvements was barred.

11322. Was barred?—Yes: for instance, if he had taken proceedings under the Act of 1870 he would get no compensation.

11323. How does that tally with the answer you gave to Question 10215. There you say: "To put a concrete example. If, for instance, he has reclaimed land, he is given an annual allowance in respect of the expenses of reclamation;" and further on, that care is taken "that he gets a full and ample allowance in respect of it; so that he is not to be rented in any way for the improvement work"?—That is to say, under ordinary circumstances; but the exemption, as you know under the 9th Sub-section, which you are specially familiar with, is an exemption in respect of improvements made by the tenant or his predecessors in title, and for which he has not been paid or otherwise compensated by the landlord; if he has been "paid or otherwise compensated by the landlord," then the exemption from rent no longer exists.

11324. The landlord himself, by his agent, valued this man's reclamation at 10*l.* an acre; there were eight acres, that would be 80*l.*, at 3 per cent.?—You will excuse me, but I really could not, as I said the other day, re-try the question now; and I cannot say what exactly operated on my mind on the question of figures; I can only give you the general principles that we adopted in these various cases; and I say that we considered that the granting of the leases in the two cases referred to, and the length of enjoyment at a nominal rent in the other, had discharged the right to improvements.

11325. Then I will ask only one question more if you can answer it upon this: that is, whether you think a question of law arises in this case:—Holding reclaimed by tenant; proved before the Sub-Commission to be such as that it requires the continual labour of the tenant to prevent its relapsing back into its normal state of heath and furze: Submission, That no length of time can be an "enjoyment" under such circumstances?—I do not think that is any question of law; I think that is a question of fact; that is my view. The Court valuers call attention to the facts; and state that, putting aside for the moment the question of reclamation, the land was worth 2*l.* to the tenant; and I may mention that in the second case of Moore, where the rent had been raised to 5*l.* 10*s.* from 6*d.* in 1876, a tenant

Mr. *T. M. Healy*—continued.

bought it in 1884 for about three and twenty pounds at the high rent.

11326. Now I am on one case, of course, and you are on another; but if you will allow me, I will ask you this, whether no legal consideration enters into the construction of the word "enjoyment," and whether in your view it is purely a question of fact?—I think it is purely a question of fact.

11327. A question of fact?—I think so; but in any case where the question arises before us, if any Counsel asks us to state a case we will state a case; but my own impression is that there is really no question of law for the decision of a superior tribunal in this case.

11328. Have you any view in your mind as to the amount you would rent the tenant at in this case, supposing the "enjoyment" obstacle was not in the way?—I could not say. As I have already said, our decision would have been very different, and certainly the rent would have been very much lower; we would have exempted him from all rent on the reclamation, but for the fact that we considered ourselves bound by the law, having regard to that decision in Adams *v.* Dunseath, to treat the reclamation in fact as if it had been purchased by the landlord by the gift of the lease in the two cases and by the "enjoyment" in the other.

11329. The subsequent cases of Morrisey, and another case of Moore, are practically the same?—They are practically the same, and I may mention that, for some reason I cannot understand, no claim was made for reclamation in either of those cases on the originating notice. No point was raised as to that, but we dealt with them as if the tenant was entitled to claim for reclamation. In the two cases there was no claim, and no question. It is fair to the landlord to say that no objection was made on that account, and we did not take that into consideration at all.

11330. But under 10*l.* valuation they were not bound to give any improvements at all?—They had given notice of improvements.

11331. But, as a matter of fact, being under 10*l.*, they were not bound to do so?—They were not.

11332. So that they were not bound to give this notice to the landlord?—They were not; but it is a curious fact that although reclamation is claimed in one case, there is no reclamation claimed in the other two. There is no question, however; no question was raised.

11333. Both being under 10*l.*, there was no necessity?—There was no necessity.

11334. Of course no question of this "occupation interest" was raised in that case?—No such question has ever been raised.

11335. You stated, as I understand, that Mr. Gray had been in the habit of allowing 15 per cent. for occupation interest. Will you tell the Committee what became of Mr. Gray?—Mr. Gray was only temporarily attached to the Commission, and his services were not required afterwards, I think.

11336. Mr. Gray is not now in the employment of the Land Commission?—No, he was only employed for a short time.

11336.* Now this is what he says. He is asked

Mr. *T. M. Healy*—continued.

asked by Lord Waterford (Question 1972, in the Minutes of Evidence before the Lords' Committee on the 1st June, 1883): "Before I became a Court valuer I valued land as if it were in the landlord's hands; that is to say, the letting value of it. (*Q.*) The fair letting value of it?—(*A.*) The fair letting value of it. (*Q.*) And after you became a Court valuer you were obliged to deduct 15 per cent., as I understand." That is the question. "Yes; and I have adopted that on my private valuations since. I was always asked the question, and I found my former system very inconvenient." Did Mr. Justice O'Hagan make any observation upon that statement of Mr. Gray?—In the appendix to the Report of the Land Commission of 1882 and 1883, page 40, I find this: "As to the statement of Mr. Gray that he was in the habit of deducting about 15 per cent. from the letting value, to represent the tenant's right of occupation, the Commissioners can only say that they appointed Mr. Gray upon the evidence of what they deemed satisfactory testimonials, as well as upon his own oral statement of his qualifications; that not only this principle of deducting 15 per cent. did not emanate from any instructions given to him by the Commissioners, or by any Sub-Commission to which he was attached, but that it was never communicated to them, and was reserved to be stated after he had ceased to hold his office, in order to form an item in a concerted attack upon others in no way responsible for his methods." That is what Mr. Justice O'Hagan says.

11337. I suppose you have not been able, from your comparatively brief period on the Land Commission, to determine the meaning of his allegation that he was obliged to deduct 15 per cent.?—I know nothing about it. I see the terms in which Mr. Justice O'Hagan speaks of it, that he had no instructions, and I need hardly say that I take that as being absolutely correct; and to my knowledge no instructions were given to either valuers or Sub-Commissioners upon any such question.

11338. With regard to what you call occupation right or occupation interest, do you distinguish between that and what we call, roughly, tenant right?—I think it is very much the same thing. It has never received any legal definition as far as I know.

11339. And the animadversion on this proceeding of making this allowance, by the Lords' Committee and by the Land Commission, would naturally seem to point to the fact that this deduction of 15 per cent. was an irregularity?—It would seem to me that the deduction of the arbitrary sum in each case was an irregularity.

11340. But there is nothing pointed in the observations of the Land Commission to show that a fluctuating, or a regular, or a proper sum might be allowed?—There is nothing to show that any consideration was paid to it as far as any case is concerned. There is nothing to show in the records of the Land Commission, or in any reported case, that any specific allowance has ever been made for occupation right.

11341. And in the only case in which we meet any report or evidence of this occupation right being allowed for, it is met with condemnation?—It is met with a statement that no instructions had been given to give an arbitrary allowance of 15 per cent.

11342. Mr. Justice O'Hagan speaks of it as a portion of a "concerted attack" on the Land Commission?—A concerted attack on the Land Commission, that there were instructions sent to the valuers to take off a specific 15 per cent. in each case.

11343. Judge O'Hagan in his evidence objects, on the ground of policy (Question 3712 to 3716, in answer to Lord Cairns and the Marquis of Salisbury) to ear-marking the improvements?—That was his view. He had very strong views on the subject, and they are stated in that same Appendix that I have referred to.

11344. He is asked by Lord Salisbury, on page 346, this question; he says: "You mean the revelation of your reasons would create more discontent that it would allay?—(*A.*) Yes. (*Q.*) They were reasons of policy, in short?—They were reasons of policy." That is on the 25th April 1882. Now, notwithstanding that evidence by the head of the Land Commission, the House of Lords' Report is, that "they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made and preserved a distinct specification of the improvements established by the evidence, and of the value assigned to them in the settlement of rent"?—At page 38 of the same Appendix, to which I have so often referred, of the Report of the Land Commission of 1882 and 1883, Mr. Justice O'Hagan and his colleagues say in reference to that: "It is also complained of that the decisions do not show the exact deductions which have been made from what would otherwise be the fair rent on account of the tenant's improvements. No doubt it would be possible to make a specific statement of that nature. The Commissioners require that in every case the Sub-Commissioners should make a minute of the improvements taken into consideration. But as to a statement of the money value of the improvements, the rate per cent. calculated upon such money value, and the specific deductions on that account from what would otherwise be the fair rent, the Commissioners openly informed the Committee that they had given that question the most anxious consideration, and had come to the conclusions that it would be an unwise step, and likely to tend to discontent and litigation. Such is still their deliberate opinion." That was the opinion of Mr. Justice O'Hagan.

11345. I take it then that even if a Committee of the House of Commons were to concur with the House of Lords in making a similar report, it would require a Statute, with the assent of Her Majesty, to affect the Land Commission?—If this Committee made any such suggestion, all I can say is, that as head of the Land Commission I should carry it out at once, because as far as I am personally concerned, I see no objection whatsoever to giving the particulars suggested by the Lords' Committee; I see no objection in any way.

11346. That is very satisfactory. You do not then

Mr. *T. M. Healy*—continued.

then agree with Mr. Justice O'Hagan?—No, I do not. There may be some "discontent," perhaps, but I do not think it would lead to any great discontent or "litigation"; and on the other hand it would give great satisfaction to the parties to know exactly what had been allowed to them.

11347. I believe it was exactly done in O'Neill *v.* Cooper. It was ear-marked there?—One or two of the Sub-Commissioners were in the habit of stating the allowance they made, though they were not required to do so; but perhaps I might mention, in reference to a suggestion that I think was made by a member of the Committee, that it seems to me doubtful in point of law whether putting a statement of the improvements on the Order would necessarily make that statement evidence hereafter, and legislation might be necessary for that purpose.

11348. Even although you have framed a rule which you are empowered to do by Statute?—I am afraid so, having regard to a case that I would refer you to. If there is a difficulty in the matter it is well that it should be met, if there is to be legislation upon the subject. I am afraid, having regard to a case of Blake *v.* Jennings, reported in the 12th Irish Common Law Reports, page 458, that any such statement would not be evidence. That was a partition Order of the Incumbered Estates Court.

11349. What was the date of it?—It was some time, of course, in the '50's or '60's, but it was a partition Order which was made evidence by Act of Parliament; nevertheless, it was held that the recitals in that partition Order of the interests of the parties, the relative shares they held, as also the statement of the wills, deeds, and other documents, what were recited, were not evidence.

11350. That Order in that case was not made, as I apprehend, under any statutory rules?—It was made under the Incumbered Estates Act, which expressly declared that it should be binding on all the world, and receivable in evidence on mere production. It was good evidence of a partition having been made, but it was not good evidence of all the facts that led up to the partition; and I may mention, as bearing upon the same question, that also in the Trustee Act of 1850, Section 44, legislation has been considered necessary to make the recitals in a particular Order evidence, even for a limited purpose.

11351. That would be evidence in Common Law Courts?—Evidence in any Court.

11352. Evidence in any Court?—Yes; therefore I think if it was considered expedient to preserve evidence of improvements by endorsement on the Order, or otherwise, legislation would be necessary.

11353. But in the meantime, as a matter of convenience, you would be prepared to carry out such a recommendation if it were made?—Certainly.

11354. I do not know whether you are aware that under a section of the Crofter's Act a question exactly similar arose?—I am not aware of that.

11355. And was decided in favour of the tenant?—I have never seen the case nor considered it.

11356. You have not considered it?—I have not considered, or even heard of the case.

11357. It is to be found in the Crofter's Commission Report of 1887, page 101. Mr. Kenny and Mr. Carson have suggested that some of those exclusions in the Acts of 1881 and 1887 affect only a very small number of cases, and especially Mr. Kenny, I think, referred to the limited owner point; Massy *v.* Norse, and that class of cases. I wish to ask you this question: whether it is not a greater hardship to be one of a small number of insignificant people who are unable by agitation to affect legislation, or to be one of a large number who, by their numbers and strength and power, may be able to affect legislation?—That is hardly a question upon which I can give an opinion that is worth more than the opinion of any passer-by, as I may say.

11358. But the question is put to you that if the exclusion affects only one man or 10 men it should not be considered important, whereas if it affects a thousand it should?—Yes; but at the same time, if you are going to remedy that grievance, you must take care that you do not alter the law fundamentally in reference to other cases that are outside it.

11359. With regard to fundamental alteration of the law, are you aware that Lord Cairns, in the House of Lords, in this 14th Section struck out the words "immediate landlord," and sent it down to the House of Commons with the words "limited owner" in it?—No, I am not. As a rule I never read Bills when they are passing through the Houses.

11360. "The landlord being the limited owner"; that is inserted by Lord Cairns and the House of Lords, so that the very grievance which exists would have been met if the words of the House of Lords had remained intact; is not that so?—I have not considered that, and would not like to express any opinion as to whether it was sufficiently worded to meet the grievance; but as it is drawn there, it seems that it does meet it.

11361. Who appoints the Court valuers in the Appeal Court?—With regard to the Court valuers and the Sub-Commissioners, certain of them are assigned for valuing duty, and they are sent backwards and forwards. Sometimes they are sent to a Sub-Commission; sometimes they are taken away for valuation purposes when there is a press of appeals to be valued.

11362. I think you take the view that the landlord, at the expiration of the statutory term, is estopped from denying the present tenancy?—I think so. That is the view I take.

11363. And does that view extend even to cases where no legal question or objection was raised below?—I think so, because I think it was a question necessarily involved in the decision of the Court in fixing a fair rent, assuming always in every case that the relation of landlord and tenant exists; some relation of landlord and tenant. I think probably it would be held (guarding myself, as I have said before, against this being considered as any judicial expression of opinion) that the landlord was estopped

Mr. *T. M. Healy*—continued.

estopped from raising the question that the tenant was not a present tenant.

11364. Is it not unquestionable that in one case at least Mr. Justice Holmes, sitting as Appeal Judge from a Civil Bill Court, granted ejectment where a fair rent had been fixed?—No; the way it stood was this. The decree of ejectment was made before any fair rent had been fixed, and the great question was (and a most difficult question) whether the tenancy had been determined by the decree, and whether in fact there was anything for the fair rent order to operate upon. You will see that question was also raised in a reported case (Gorman *v.* La Touche), and both Lord Justice FitzGibbon and Lord Justice Barry expressed the opinion there that if the tenant had not got his rent fixed before the decree was made probably his right is gone.

11365. Will you tell the Committee (probably they are not familiar with it) what is the limit of County Court jurisdiction in Ireland?—I think it is 30*l.*

11366. And 30*l.* would cover four-fifths of the tenancies of Ireland?—It covers a very large number.

11367. These ejectments can never be tried by a jury in the County Court, can they?—I think not.

11368. When the judge tries them on appeal, the judge can never have a jury?—No.

11369. So that four-fifths of the tenantry of Ireland are liable to ejectment on the mere view of the County Court judge, from whom an appeal would go only to a Judge of Assize?—An appeal would be to the Judge of Assize, and then, if any serious question of law arises, a case is stated for the Court of Appeal.

11370. At his option?—At his option. Well I have never known it to be refused when there was any serious question.

11371. If the County Court judge elects to take a strong view of the law (we know there are strong men), and on appeal it comes before another "strong" judge, he may take a different view of the law from that expressed as to the impregnability of a fair rent order, may he not?—Of course, any judge may take a different view; but if the Court of Appeal has decided the question the judge would follow the decisions of the Court of Appeal.

11372–3. But has the Court of Appeal decided the question?—This particular question, you mean? No; the facts in Gorman *v.* La Touche were almost identical with those in the case referred to before the Committee of Quinn (I think) *v.* The Marquess of Downshire. I was counsel myself for the tenant in the former case, and therefore I am very familiar with the facts; and it seemed to me that Mr. Justice Holmes' decision was virtually in accordance with what some of the members of the Court of Appeal at any rate would probably hold to be the law.

11374. But at any rate it is a moot question?—It is, and it is not in any way settled.

11375. Would you consider it desirable, by way of a bill of peace, that for these 300,000 tenants who have had fair rents fixed, the law should be declared?—In my opinion it does not

Mr. *T. M. Healy*—continued.

apply to any of those 300,000 tenants, at least not the 300,000 who have already had their rents fixed. It only applies to those tenants who have not had their rents fixed.

11376. I do not follow you?—What I mean is this. Mr. Justice Holmes' decision only applies to a case where a decree in ejectment had been made before any Order was made fixing a fair rent. Therefore, in all those cases in which fair rents had been already fixed, that case is of no application at all.

11377. Is not the question open; for instance, supposing that the judicial tenancy in a piece of demesne land, where there was sub-letting, say, had been fixed *per incuriam*, is it not open to consider whether that tenancy cannot be attacked by ejectment or notice to quit?—I will guard myself in this way: If the question whether it was demesne land, whether it was a town park, or whether it had been "let to be used mainly for the purpose of pasture," was specifically raised originally before the Sub-Commission or County Court and decided adversely to the landlord, in my opinion it would not be open.

11378. I quite agree in that, but that is not what I am on. I am on a case where such a point was not taken below. Take this case: For the landlord it is shown that a fair rent was fixed in circumstances where there was no jurisdiction, because the holding included a piece of demesne land, or it included pasture letting, or it included a case where there was a sub-letting, or something of that kind, would not you rule that it was open to the landlord to raise that point?—I would go so far as to say that it is an open question as to whether the landlord could raise that point or not.

11379. Then the position that I submit to you is this: would not it be desirable that there should be a statutory enactment quieting these people in the possession of their tenancies?—There is no question at all that it would be very desirable in the interest of the tenant, and there is no question at all that it would be very undesirable in the interest of the landlord. You understand what I mean by that. If the rent had been fixed without jurisdiction originally, of course the landlord was damnified; if fixed without jurisdiction some persons at least might think there was not the same ground for quieting the tenant in a case in which he had wrongly succeeded in fixing a fair rent.

11380. As I understand you, you say that in any case where a law point was not taken below it would be very unfair to the landlord to allow that law point to be taken at the end of the 15 years?—I would not say anything of that kind, but I would not give any encouragement to the raising of law points again, so far as I am personally concerned.

11381. You would be bound by that?—Certainly not; but you ask me for an expression of opinion as to whether I think it fair that the question should be raised; I would not encourage the landlord to raise it.

11382. It hardly rests on personal volition; you will have to decide it as a judge?—Of course.

11383. And if you found that the rent was fixed, let us say *per incuriam*, or fixed without jurisdiction, or fixed where there was a substantial

Mr. *T. M. Healy*—continued.

law point to be mooted which was not mooted, it would be your duty, I apprehend, to allow it to be mooted?—If I find that the landlord has not been estopped by a previous decision I will entertain the question again; but I am by no means clear about it at present, and I express no opinion upon the subject.

11384. The tenant in no case gets costs in the Sub-Commission Court?—No.

11385. And the successful party gets costs in the Appellate Court?—That is the general rule.

11386. Why should not the successful party get his costs in the inferior as well as in the superior Courts?—It seems to me to stand on quite a different basis. Judge O'Hagan has discussed that, I think, in his evidence before the Lords' Committee. The rent is fixed, one might almost say, by Parliament, and not by the wish of the landlord, and it would be a hard thing to impose all the costs of a litigation of that kind upon the owner of the estate.

11387. Ejectments are also granted by Act of Parliament as well as fair rents; and the successful party gets the costs of the ejectment?—That is a different matter. That is not for the purpose of fixing what is to be the rent payable by one party to the other, but it is to get up possession of land to which a man is entitled by law upon the non-payment of a year's rent. And as well as I recollect, if no defence is taken, there are no costs in ejectment.

11388. Do you think it would tend to more reasonable conduct on the part of the landlords, and stop the glutting of the courts with these cases, if they knew that where the rent was found to be unfair they would be visited with costs?—That is a matter, really, that my experience does not enable me to offer any opinion upon.

11389. But in nine-tenths of the cases that come before the Sub-Commission Court and the Head Commission Court the rents are found to be unfair?—I should not like to assent to that. They are found to be not what is called a fair rent at the present time, but that may be largely due to changes in prices. If you use the word "unfair" in the sense of being not a fair rent, then of course the rent is unfair, but if you mean an unreasonable or unrighteous rent, it does not always happen that that is so at all. I mean to say that the reductions are very often not more than the reductions that have been made voluntarily by the landlord for a considerable number of years.

11390. But where the tenant has been endeavouring to secure from the landlord an abatement of rent which is refused by the landlord, and the Sub-Commission finds that it ought to be granted, and fix a lower rent, do not you think that in that case the successful litigant should be entitled to his costs?—I do not. I adopt the view of Mr. Justice O'Hagan, page 17 of Adams *v.* Dunseath, as reported in McDevitt's reports, in which he states the principle that influenced him in making that rule in reference to costs.

11391. The parties injured, however, in these matters are the large body of the tenants?—Both landlords and tenants are vitally interested in the question of fair rents.

Mr. *T. M. Healy*—continued.

11392. And vitally interested in the question of costs?—And vitally interested in the question of costs.

11393. Yet the Land Commission alone, of all the Courts in the realm, declare that the successful party shall be deprived of his costs in these hundreds of thousands of cases?—The Land Commission have taken the view expressed by Mr. Justice O'Hagan, that it is not to be treated as hostile litigation between two hostile parties. The State has interfered and done away with the freedom of contract, and established a tribunal to fix independently what is the fair rent.

11394. When the Sub-Commission dismiss a case out of Court, do they give costs?—If it is dismissed as a case that does not come within the Act.

11395. Although the tenant might be entirely ignorant of the law point excluding him?—Ignorance of the law cannot be excused, according to the legal maxim.

11396. I wish to ask you if you can give the Committee any explanation of why it was that Mr. Justice O'Hagan's decisions were never reported in the authorised reports, nor Mr. Justice Litton's decisions?—I cannot say at all.

11397. But your decisions are reported in the authorised reports?—Yes. I think possibly it was that there were so many other cases to be reported that they did not think they could make room for the Land Commission cases. Now that there are not so many cases, as we all know, to be reported from the other Courts, they have taken in Land Commission cases, and further they have become alive to the fact that these Land Commission cases are some of the most important cases that are reported of recent years, cases that are most vitally important to a vast number of people throughout the country.

11398. Did it come under your notice, that some of the judges protested against Land Commission cases being reported in the authorised reports?—I never heard of that. I mentioned to this Committee the fact that as soon as I was appointed I got an official communication from the Council to say that they had resolved to appoint an official reporter in my Court, and I have given him every facility.

11399. Perhaps it might be on the ground that the Land Commission Courts were not, strictly speaking, Courts of law?—That may also have influenced them. I mean to say, while they report my decisions, they might not care to report the decisions of Lay Commissioners.

11400. But the fact remains that there is only one lawyer to four laymen, because although Mr. Commissioner FitzGerald is a lawyer, that is only by accident?—It is an accident that has continued from the commencement of the Commission.

11401. But the Act only provides for one lawyer?—That is all. The original Bill provided for two, two judges.

11402. And it is only the decision of the Legal Commissioner that is reported?—Oh, yes, they report the decisions of the other Commissioners.

11403. In the authorised reports?—In the authorised reports.

11404. Mr. Murrough O'Brien, for instance, is he reported?—Yes; you will see that in that case

Mr. *T. M. Healy*—continued.

case of Kieran *v.* Mollan his judgment is reported.

11405. Now I wish to ask you whether the view of the law which prevailed in cases like Gillman *v.* Murphy is still acted upon—what Lord Justice Christian called a *reductio ad latrocinium*?—I am sorry to say that view of the law prevails, and questions have arisen before me on two or three occasions lately.

11406. That is a very unfortunate state of the law, is it not?—I would go further and say an iniquitous state of the law.

11407. Would you tell the Committee why?—I will tell the Committee what the law appears to me to be upon that subject: Under the Act of 1860, Section 10, no assignment of a leasehold is legal if the lease prohibits or restricts alienation, unless consent is given to it by the landlord either in the form prescribed by the instrument, or in the form prescribed by that Section 10 of the Act of 1860; that is by the landlord or his agent being a party to the instrument of assignment, or where he or his agent testify their consent by an indorsement on the deed. The 18th section, as well as I recollect it, of the Act of 1860, has a similar, or almost similar, provision in reference to sub-letting. That has been construed in this way: that if the assignment is made without the necessary consent, it is held to be absolutely void, and even the person himself who has assigned the lands may bring an action of ejectment for their recovery. That is what Lord Justice Christian called a *reductio ad latrocinium*; but then there came this further case, a case of sub-letting, in which a man may make a sub-letting, and if the necessary consent is not obtained, he may recover the lands by ejectment from the sub-tenant. The case in which Lord Justice Christian made these observations was, as well as I recollect, the case of Doody *v.* Nolan. That was a very strong case. On the occasion of a marriage, the father of the lady agreed to assign over a leasehold farm, and he purported to assign it by the marriage settlement. It turned out afterwards that there was a restraint on alienation in the lease, and although the marriage was solemnised on the faith of this arrangement, afterwards the father-in-law of the gentleman who had married repudiated the entire transaction, and it was held by the Court of Appeal that he was authorised to do so, Lord Justice Christian dissenting, and referring, I think, then to this case as being a *reductio ad latrocinium*. I had a recent case, perhaps I may tell the Committee, in Belfast; an interesting case on the same question. In this case in Belfast, which was the case of Mathew Parker, tenant, and Thomas Stevenson, landlord, the tenant, who came to fix a fair rent, had paid his rent to his landlord for 37 years, receiving receipts as if he was an ordinary tenant. When the case came on afterwards before the Sub-Commission, the landlord said, "You are not my tenant at all because I hold under a lease which contains a covenant against sub-letting without the consent of the landlord under his hand and seal; I had no power to sub-let to you, and this transaction was entirely illegal, and you are not entitled to fix a fair rent." The legal Sub-Commissioner thought he was bound by the case of Jagoe *v.* Harrington (10 Law Reports (Ireland), page 335), and dismissed the tenant's originating notice. The case then came on before the Land Commission on appeal, and I thought that in that particular case I might apply a principle which was decided by the Exchequer Chamber (which was then the Court of Appeal in legal cases in Ireland) in a case of Tennant *v.* Neil, which is reported in the Irish Reports, 5th Common Law, 418. I thought that it was a case in which I might presume that the necessary consent had been given, or that a deed had been executed releasing the covenant; and thereupon I and my colleague, acting as jurors, found that, as a matter of fact, there had been such a deed, although, as in cases of that kind, it is not necessary that one should believe such a deed ever existed. However a case has been stated for the Court of Appeal, and the question for the Court of Appeal is now, whether under the circumstances it was competent for us to find that this consent had been given.

11408. Did you come to that conclusion as to the consent, because of the length of time that had elapsed?—The length of time.

11409. If the Court of Appeal affirmed your view, would that get rid of Gillman *v.* Murphy?—That would only apply in the particular case, the length of time. The same question has been raised before me recently in a case at Cork, and I must say I thought it a very unrighteous case. A man who was a large tenant-farmer had got his own fair rent fixed, and then a sub-tenant of 14 acres of poor mountain land came to have a rent fixed against that middleman, so to speak; he at once raised the question, and said: "Oh, this is a sub-letting without consent, and you are not my tenant at all." Well, fortunately, in that case we were able to find out that this large tenant-farmer before he went into the Court himself, fearing that the question of sub-letting might be raised as to the 14 acres, wrote to the agent of the estate, asking, would any objection be taken on the ground of sub-letting. The agent very fairly replied that no objection would be taken at all; therefore we held in that case that there was such consent as was necessary.

11410. Will you give the name of the case, was it David Powey?—I would rather not give the name; I will write it down.

11411. It is very desirable that we should get it on the notes?—David Powey was the landlord, and Thomas Shehan the tenant. I thought it a very unhandsome thing, to say the least, after he had succeeded in getting a rent fixed on the faith of the sub-letting not being objected to, and had got that consent, he should turn round upon his own sub-tenant, and say, "You are not my tenant."

11412. Are the Sub-Commissioners prohibited in any way from publicly expressing their dissent, when they cannot agree on the question of the fair rent?—Oh, no; on the contrary, they may express it openly in Court; there is no objection to that at all; and invariably they express it in the Minute of the Order, or sometimes by making separate reports; when they differ to any considerable extent they fill up two distinct pink forms and send them back to us.

11413. Do landlords frequently write to the Land Commission respecting Sub-Commissioners?

Mr. *T. M. Healy*—continued.

sioners?—Not to my knowledge. I have never received any such letter, and I get letters from a great many persons, the majority of which I never answer.

11414. My last question is: Could you give the Committee any idea of the costs of a motion in the superior Courts?—In our Court?

11415. No, in the superior Courts?—I could not, but it is very much in excess of the costs of a motion in our Court.

11416. That is what I want to get at. The costs of both sides would not be far short of about 30*l.*, would they?—In a contested motion, with a number of affidavits, the costs may come to that. In our Court we are in the habit of giving very small sums for costs, a guinea, or two guineas.

Mr. *T. M. Healy*—continued.

11417. The Chairman wishes to know what would be the costs in your Court of a motion?—Usually in our Court we fix a sum for costs, we do not leave it to taxation. Sometimes in small cases we only give 10*s.* 6*d.*; sometimes a guinea, sometimes two, and sometimes three or four in very big cases.

11418. Guineas?—Guineas, yes. Three or four guineas would be an exceptional case, a case perhaps with two counsel on each side.

11419. The reason I wished to ask you the question was this: The 13th section of the Act of 1881 has been referred to as a section which would enable the tenant to put a stay on the landlord's ejectment on terms in your Court?—No, not in our Court; it is in the Court in which the action is brought.

Friday, 27th July 1894.

MEMBERS PRESENT:

Mr. Brodrick.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. T. W. Russell.
The Solicitor General.
Mr. Sexton.
Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Chairman.

I HAVE to announce that the Committee have resolved that a certain correspondence between Mr. W. F. Bailey and Lord Justice FitzGibbon shall be given to the public in the same way as that in which the correspondence between Mr. Justice Bewley and Lord Justice FitzGibbon was given to the public.

CORRESPONDENCE between Mr. *W. F. Bailey* and the Right Honourable Lord Justice *FitzGibbon.*

"18 July 1894.

"Dear Lord Justice FitzGibbon.

"In a letter from you read by Mr. Justice Bewley before the Select Committee of the House of Commons on the Irish Land Acts, you make the following statement: 'I could not follow Bailey's evidence as to the action of the Land Commissioners upon this and other points, and he was so wide of the mark in his version of the decisions of the Court of Appeal that I could feel no confidence in his accuracy upon any other branch of his subject where others differed from him.

"I need hardly say that a statement of this kind made by a judge of the High Court of Appeal to the judicial head of the Land Commission with respect to an Assistant Commissioner attached to that department, is a matter of such serious importance as to require absolute justification. I gave evidence for five days before the Select Committee. That evidence was printed in the official notes, and was before you when you gave your evidence. I listened to your evidence with attention and I have read the official report of it with care, and I cannot find that you made any attempt to show that I mis-stated the decisions of the judges of the Court of Appeal. If I had misrepresented those decisions one would, I think, naturally have expected that you would have shown the Committee how and where I had done so. I regret that you should have allowed the opportunity so readily furnished to you of correcting my statements to pass by, and that you should have adopted the less convenient course of impugning my accuracy in a letter to

Chairman—continued.

the head of my department. Now that that letter has been made public I think that you will agree with me that I am fairly entitled to ask for some explanation of your statement and to request you to be so good as to indicate the grounds on which you have based so serious a charge as that contained in your letter to Mr. Justice Bewley.

"I am, &c.

"*William F. Bailey.*

"The Right Hon.

"Lord Justice FitzGibbon."

"Dublin, 10, Merrion-square.

"20 July 1894.

"My dear Bailey,

"I regret that the unexpected publication of my reply to Mr. Justice Bewley's letter of July 7th should have given you occasion to ask me for an explanation of my reference to your evidence before the Lands Acts Committee. I took the letter which I answered to be a communica- from one friend to another, informal and unofficial, though on an important subject, written to ascertain whether Judge Bewley's understanding of my evidence in reference to the case of Adams *v.* Dunseath was correct, as contrasted with 'statements in newspapers and elsewhere,' that the Land Commission had misinterpreted the decision of the Court of Appeal.

"The most specific of these statements which I have seen in the 'Freeman's Journal' of June 8th, was based upon your evidence, and said that, if I were right, the procedure of the Land Commission, as explained by you, and the interpretation placed by it upon the judgment of the Court Appeal, were in defiance of the law as laid down by the Judges of my Court. I was thus obliged to refer to the authority on which the statement rested, in order to answer Judge Bewley's question.

"When summoned as a witness, I was furnished from the Irish Office with the 'Freeman's Journal' report of your evidence. It conveyed that tenants had been deprived of the benefits of the Land Acts by the interpretations which the

Chairman—continued.

Judges had put upon those Acts, that our decisions were in some instances contradictory, and in others had not given to the Land Commission that guidance which was fairly to be expected. I did not get the official report of your evidence until after I reached London. When called as a witness, I went in detail through the cases to which you had referred, giving the facts and grounds of decision, and, especially with regard to Adams *v.* Dunseath, quoting the judgments themselves. My evidence must speak for itself, and you will see from it how widely it differs, in result and in detail, from the account which, no doubt upon imperfect information, you had given, and how far it corrects the impressions which your evidence had conveyed, as to the action and the decisions of my Court.

"The witnesses from the Land Commission who followed you, and whose evidence had not been taken when the statements were made of which Judge Bewley complained, appeared to me to differ from you as to the procedure of the Commission in fixing fair rents, and especially as to the effect given to the decision in Adams *v.* Dunseath. I have only seen newspaper reports of their evidence, but it did not seem to show uniformity of procedure, nor to support the statements adverse to the Land Commission, which had been previously made upon the supposed ground of difference between the procedure as explained by you and my account of the decision in Adams *v.* Dunseath.

"It was to this that I referred in my letter to Judge Bewley. But I most earnestly disclaim having made any charge against you, beyond that of having been led into making statements which I could not accept as accurate in the course of your discussion of complicated and difficult decisions and subjects, as to which you had not the same information which my position gave me.

"Having thus given you the explanation for which you ask me, you must allow me to add the expression of my sincere regret that any letter of mine should have been made public in a manner which could cause you pain. For that publication, I really feel that I cannot justly be held responsible, for even now I cannot see that I could have anticipated it.

"I must also add the emphatic assurance, though I trust it is not necessary, that no thought of impugning your truthfulness, or of injuring you in any way, for a moment entered my mind.

"Furthermore, I shall be glad, if you desire it, to give the same publicity to this explanation which my letter so unexpectedly received, by placing what I have now written in the hands of the Committee.

"I remain, my dear Bailey,
"Faithfully yours,
"*Gerald FitzGibbon.*

"W. F. Bailey, Esq."

"62, Harcourt-street, Dublin,
"24 July 1894.

"Dear Lord Justice FitzGibbon,

"I have to think you for your friendly reply to my letter of the 18th inst., and while fully

Chairman—continued.

accepting your assurance that you had 'no thought of impugning my truthfulness or of injuring me in any way, I feel that the situation as regards myself, created by your reference to me in your letter to Mr. Justice Bewley, is still unsatisfactory. You say that your letter containing the reference I complained of was not intended for publication. I cannot, however, but think that it is juster and fairer to me to have such criticism as that contained in your letter made in public than that it should be conveyed in private, when I would have no opportunity of knowing of or of answering it.

"I cannot quite see the relevancy of your reference to the newspaper report of my evidence with which you say you were furnished, as you say that you had the official report of my evidence before you when you were examined.

"You appear to adhere to your assertion that my version of the decision of the Court of Appeal in land cases is inaccurate and misleading. I still think that such a statement should be supported by some proof or justification of a specific character. You say that your evidence must speak for itself, and that I will see from it how widely it differs in result and in detail from the account which I had given. Now, this is precisely, if you will excuse me for saying so, what I do not see. Taking my evidence as a whole, I cannot find that in any material respect, with the exception of one or two points to which I shall refer, does it differ from yours. When dealing with some unreported decisions, I was not able to give in the first instance accurate details of the particular facts of the cases, but even in these instances I cannot find, after a careful study of the reports af the judgments, that I have misrepresented or misstated the broad legal effect of the decisions of the Court of Appeal.

"In a few instances, doubtless owing to the superior information 'which your position gave you,' your version of Court of Appeal decisions is not the same as mine, but neither does it quite agree with the reports of the cases to which I had access and from which I gave my evidence. As my information was limited to such reports, I can hardly be blamed for trusting to them. Thus, when dealing with the question of 'trivial sub-letting,' under Section 4 of the Act of 1887, I referred to the case of Kennedy *v.* Essex, as a decision on the subject. You, in giving evidence (Questions 3281–2), referring to the cases of White *v.* White and Ward *v.* Corballis, say, 'Those are the only two cases that have come into court under the Act of 1887' (on the question of triviality), and, 'I do not believe that Kennedy *v.* Essex was decided under the Act of 1887.' Now, the report of the case given in 26, Irish Law Times Reports, page 8, states that the tenant "served an Originating Notice as lessee under the Land Law (Ireland) Act, 1887," and Lord Ashbourne in his judgment says, 'from the terms of Mr. Justice Bewley's judgment, it would appear that the case was presented to the Court on behalf of the tenant as one of trivial sub-letting, merely.' When I was giving my evidence, Kennedy *v.* Essex was the only reported case in which the question of 'trivial

Chairman—continued.

'trivial sub-letting,' had been discussed by the Court of Appeal, so far as I am aware.

"Again, in dealing with demesne lands as excluded from the Land Acts, I referred to the case of Spencer *v.* Tedcastle, as a decision of the Court of Appeal that demesne lands were not 'undemesned' by being let on a long lease, or in perpetuity, 'that is if let as demesne land' (Question 990–993). In your evidence in answer to the Question (3505), 'You have not referred to Spencer *v.* Tedcastle. As I understand, it went this length, that demesne land let for a period of 999 years was not undemesned by that.' You replied 'No; Spencer *v.* Tedcastle went on the same principle as was reduced to a very much lower point by the case of Pratt *v.* Gormanstown; the land was let on a fee farm grant, and it was the grantee who made it a demesne, and what Spencer *v.* Tedcastle decided was that a grantee for ever might make land demesne.' Now, the head note to the report of the case in 32 Law Reports, Ireland, page 411, states as follows the result of the decision: 'Demesne lands are not undemesned by the mere fact of their having been granted or demesned for so long a period as to negative any intention in the grantor or lessor of resuming possession at some future time.' The summary of the evidence given in the Report (page 412) says: 'The lands were demised originally by a lease dated November 29th, 1800. The lands were therein described as demesne lands.'

"You say also that the subsequent witnesses from the Land Commission appeared to you to differ from me as to the effect given to the decision in Adams *v.* Dunseath. I have referred to the evidence of Mr. Hoyle and of Mr. Greer, the other Legal Assistant Commissioners examined, and I find that they have given precisely the same interpretation as I had stated had been adopted by the Land Commission in dealing with the distribution of the increased letting

Chairman—continued.

value which might arise from the making of improvements by a tenant.

"You also complain that the unofficial report of my evidence which you had seen conveyed that tenants had been deprived of the benefits of the Land Acts by the interpretation which the judges had put upon those Acts, that your decisions were in some instances contradictory, and in others had not given to the Land Commission that guidance which was fairly to be expected. I really cannot find in my evidence that I made, or intended to make, any of these assertions. Anything that I said which could be construed as furnishing support for such propositions has not, so far as I can see, been put one whit stronger by me than by Mr. Justice Bewley, whose experience, if I may say it without presumption, cannot be doubted, and whose legal accuracy and ability are beyond all controversy. Under these circumstances, I think I cannot fairly be expected to be quite satisfied with any explanation which still leaves me open to the criticism, that I was so wide of the mark in my version of the decisions of the Court of Appeal, that you could feel no confidence in my accuracy upon any other branch of my subject where others differed from me.

"I must, however, leave the subject to the judgment of the Committee, and I gladly accept your frank permission to give your letter to me the same publicity as your original statement received.

"In writing to you thus, I hope that you will not think me wanting in that courtesy which is due to your position, or that I do not reciprocate the friendly spirit in which you replied to my letter. "I remain, &c.

"*William F. Bailey.*

"The Right Hon.
Lord Justice FitzGibbon."

Mr. JOHN CHUTE NELIGAN, called in; and Examined.

Chairman.

11420. YOU are the Recorder of Cork?—Yes.

11421. And as such County Court judge?—I am County Court judge of the East Riding of the County Cork.

11422. They are two different and independent offices?—They are two independent jurisdictions.

11423. It is as County Court judge, of course, and not as Recorder of Cork that you have to deal with land cases?—It is.

11424. How long have you been County Court judge?—Of Cork, exactly two years. I was appointed in the July of 1892. Before that I had been at Londonderry.

11425. Before you were in East Cork you were County Court judge elsewhere?—Yes, at Londonderry.

11426. Had you land cases in Derry as well as in Cork?—I had.

11427. That is to say you were the County

Chairman—continued.

Court judge there in 1881?—I was appointed in the end of 1882. Before that I had been in what is called the Quadrilateral, the two Meaths, King's County and Longford.

11428. But had you land cases there?—Practically the Act had not commenced to work while I was there.

11429. You were of course a barrister?—Yes.

11430. Whilst you were at the Bar had you a large experience in land cases?—Practically speaking, I left the Bar before land cases came into Court much. My health had broken down and I had to go abroad. Any experience that I have had in land cases has been entirely since I have been on the Bench.

11431. The only point on which I wish to ask a question or two of you is the point of valuation?—I have only been two years in Cork. I have gotr fom the office a note of the number of cases that

Chairman—continued.

that came before me in the County Court, and of the results.

11432. You mean the number of cases that came before you as County Court judge?—Yes, of land cases.

11433. Will you give us that?—In two years there were 207 cases.

11434. Two hundred and seven applicants to have a fair rent fixed?—Two hundred and seven originating notices to have a fair rent fixed. Of those 52 were transferred to the Commission, and I therefore heard 155.

11435. In two years?—Yes. There is no arrear; they are heard up to the last. Of the 55 there were 38 appeals.

Mr. *T. W. Russell.*

11436. Against your decisions?—Appeals from me.

Chairman.

11437. How did the Land Commissioners decide?—I have been called here rather suddenly; I wrote unexpectedly for information to the office, and they have only given me the result of the appeals at the last sitting of the Land Commission. I can give you that. Of course I can get the others if you wish.

11438. Give us what you have?—I will give you what I have. There were four appeals from me at the last sitting of the Land Commission. (They sat in Killarney.) In one of those the rent as fixed by me was reduced; in one, the rent as fixed by me was affirmed; and in the other two, the rents fixed by me were raised.

11439. You cannot give us the results of any of the other appeals?—No, I have not got them; but I can procure them.

11440. Now I want to ask you a question as to the relation between your Judgment and the report furnished to you by your valuer: Do you form an independent judgment upon the case, or do you take the report of your valuer for granted?—No; I use an independent judgment. I believe it is my duty to do so; and since I commenced adjudicating on those cases I have done my best to understand the subject, and to make myself master of each case.

11441. And you would think that your judgment, so formed, after you had mastered the facts, would be better than the judgment of the valuer who inspected the farm?—If you will allow me I will answer that question rather indirectly. I take a very full note of every case that comes before me. I never allow any case to be heard before me in which I do not take a full note of the evidence.

11442. From the report of the valuers?—From the valuers for the landlord and the valuers for the tenant. If the professional men have not satisfied me, I try, by my own examination, to exhaust them as well as I can. I note everything they tell me; I have the valuer sitting alongside me; I have his report before me: if I find much difference I call his attention to it. I ask for an explanation from him. I note all in my own book; I always take that note home; and I never give the judgment until I have considered it and sat over it for some timme.

11443. Then you do not follow the practice to which Judge Shaw confessed?—I do not.

Mr. *Macartney.*

11444. Had you any experience in Londonderry in land cases?—I had rather a large experience in Londonderry. I rather think, owing to an accident, that a vast number of cases came before me in Londonderry. I can explain what that was if you will allow me.

11445. Perhaps you will tell us what the "accident" was?—You are aware that what we know as the "London Companies" have large estates in the County of Londonderry. Two of those companies (I think it was the Salter's and the Draper's) wished to sell their estates to the tenants; and before doing so they wished that judicial rents should be fixed. They brought in an immense number of cases before me on the whole of those two estates in that way. There I had nothing to think of but value; there were no outside questions of presumptions for improvements, or anything of that kind.

11446. May I ask you at what period is the valuation made in your Court; at what period does your valuer proceed to work?—As soon as ever I get the originating notice and know what is before me, I send it to the valuer with directions to go down. I generally try to give him as long as I can; about 10 days as a rule, we will say.

11447. Then when the case comes on for hearing, his valuation is before you?—It is.

11448. We have had some evidence before the Committee against the practice of one valuer only. Judge Shaw and, I think, one of the County Court valuers, both expressed themselves to the effect that they thought the system of one valuer was not as good as it might be. Is it your opinion that your Court would be stronger with two valuers?—Those questions come upon me a little by surprise; I would like to think a little before I answer.

11449. Certainly?—What I would say to that is this. I do not know that I would arrive at a fairer conclusion, but I do believe that the Court would command more outside confidence if it had two valuers.

11450. Yes, that is what I wanted to know.—I think that because I am judging now from statements I have heard. I am not speaking from personal knowledge; I am speaking from hearsay. Of course I make it a rule never to discuss any of those matters with any persons in my jurisdiction or county.

11451. Then we have had some evidence as to the manner in which the valuer is paid. Do you think it is prejudicial to the useful effect of the Court, the valuer being paid for the day?—I have not heard any of my valuers complaining of being insufficiently paid; but I really do think that it would be right to put my Court as much as possible on the same footing as that of the Sub-Commission. Whether there were one or two valuers, I think it would be better that he should be a permanent official, and not a man paid (may I say it?) by the job.

11452. Are there any other objections that occur to you to the method that you are obliged to pursue in your Court?—I am not aware that there are.

11453. Then, admitted that those two objections were removed, do you consider the County Court

Mr. *Macartney*--continued.

Court a suitable Court for a revision of rent?—I may be a prejudiced witness, but I think so.

11454. Now, on the question of appeal; what is your view as to the desirability of preserving an appeal?—Oh, I am strongly an advocate for appeals from all Courts of first instance; whether a man be a County Court judge, or whether he be a Land Commissioner, he is a human being; and I think the appeal has a most wholesome reflection on his mind; I would facilitate an appeal from him. I should be very sorry, as a County Court judge, to know that the right of appeal from me was removed.

11455. Does that opinion apply both to questions of law and value?—It applies to all.

11456. Has it been your practice to give any instructions to your valuers before they visit a farm?—Is it as to valuing you mean?

11457. Yes, as to what they are to do?—Oh, no. I always look at it that that is their function, not mine. As to giving instructions, I do not sit down and give them a lecture; but I have conversation with the gentlemen, and they know very well what I wish; for instance, they know I wish their examination to be as minute as possible; field by field in every case, and, where there is a great difference of quality of land, if possible, acre by acre, and by the gentlemen who value for me I find that that is done very scrupulously.

11458. But you leave them perfectly free as to the method?—Yes, as to the method by which they arrive at their valuation, because I believe the law has left that in their hands and not in mine. That would be subject, again, to this observation: if I find that my valuer differs as to any portion of the holding from, say, the tenant's valuer or the landlord's valuer (that is before me), I point it out to my valuer; I ask him very very closely how it is, or if he can explain the difference; I form my own opinions; and it has sometimes occurred that I have differed with my valuer, that is, as a juror sitting there, I arrive at a conclusion different from his sometimes.

11459. Now, with regard to the question of improvements, is it your experience that the tenants have any difficulty in giving you legal proof of the improvements which they claim?—I have been fortunate in that. I do not remember any case before me where there has been any difficulty or question as to by whom the improvements were made.

11460. Speaking generally, is there a dispute or not in your Court as to improvements; I mean to say, do the landlords generally make a claim to the tenants' improvements, or do they acquiesce in the view that the improvements are generally belonging to the tenant?—Again, if you will allow me, I will answer perhaps a little more largely. The very first question I ask when a case is called, is: Does the landlord here claim the buildings? As a general rule (certainly in Cork) he does not; therefore they are excluded. Then you come to the question of the other improvements, which appear indorsed on the originating notice.

11461. With regard to other improvements, such as drainage, what do you say?—I have never heard any question raised as to whether the

Mr. *Macartney*—continued.

tenant did, or did not, make the drains which are the result of the inspection. "Drainage" is a large word. Very often the tenant will say: "Drained on such-and-such a field." When my valuer goes, he takes the number of perches of drains pointed out to him. I wish him to do that; I also ask the tenant's valuer about how many perches. Then I ask what kind of drains, French drains, covered drains; I have become a little familiar with these drains now, and I have an idea what it is worth a perch; and, as a rule, I do not find a difficulty in arriving at the result.

11462. We have had some evidence before the Committee that in some cases the tenants have a difficulty in proving their legal right to improvements, such as drainage or reclamation, by reason of the fact that they cannot produce legal evidence to establish their claim?—As far as legal evidence goes the fact that the drainage is there satisfies me.

11463. That satisfies you?—Yes, if the drain is there I am satisfied. Then, very often, comes the question: Is the drain in working order? Drains may be well made or ill made, and it depends very much upon the original formation of the drain whether it is, after a lapse of time, really a drain at all in working order; it very frequently turns out that it is not. Drains require a little art in making.

11464. Then I may take it that generally, so far as your experience goes, no general case of hardship results to the tenants from the operation of the rules of law in your Court?—I cannot, since I went to Cork, recollect a single case in which it was questioned.

Mr. *Leese.*

11465. You said that there was no difficulty in regard to the tenant giving evidence on the point, that you could see that the drain was there, and, of course, as it was there, you could value it; the point is, who put it there; and the difficulty about the evidence is, who put it there; that is what was put to you, and that you did not answer?—Since I went to Cork (I am speaking of my own personal experience) I have never known a case in which the tenant's word has been questioned.

Mr. *M'Cartan.*

11466. Do you presume that the drains belong to the tenant?—I do not know that it is a presumption. I find the drains there; I find that his assertion that he made them is not questioned; I would not call that a "presumption."

11467. If he swears that he made them?—Yes.

Mr. *Macartney.*

11468. Can you tell the Committee upon what principle the tenants' improvements are considered in fixing the rent?—I do not clearly understand.

11469. I may put it in this way. We have had before us, of course the great case of Adams *v.* Dunseath, and the distinction drawn there by the Lord Chancellor Law. First of all there are the improvement works, which Lord Chancellor Law laid down,

Mr. *Macartney*—continued.

should be completely protected from confiscation by rent or otherwise; and secondly, the improved letting value of the land resulting from those works. Now we have had a good deal of evidence before the Committee as to the manner in which this question is treated by the lay valuers. Would you state to the Committee how you deal with the improvemants of the tenants which have been claimed and proved to your satisfaction?—If I am satisfied that the field (we will call it "black acre") has been drained by the tenant, that he has made a hundred perches or 200 perches of drains on that, and ascertain as well as I can how much a perch that cost him; I then as a general rule see how long he has been in the enjoyment of them, then I do my best to recompense him for his outlay. Then as to the future rent put on it (assuming that there is an increase), I think that is apportionable; mind you the apportioning is incapable of a fixed rule; you must deal with each case as it turns up; there are so many matters that have to be considered.

11470. But, generally speaking, do I take it, that your object is to give the tenant a full interest on the outlay?—That is my intention; I wish, as far as possible in the conclusions I arrive at, to encourage tenants to be improving, and to let them see that there is a protection for improvements made by them.

11471. From your experience, can you give the Committee any information upon this point. Some of the lay valuers who have been before us have told us that, in their opinion, when interest has been given upon tenant's outlay on the improvement, it exhausted any increased value there will be resulting from the improvement works; do you quite follow me?—I am trying to; but I do not wish to give evidence outside my own experience; I do not wish to say a word on what some other gentleman has said; I wish to confine myself to what I know of my own experience. I do not remember any case of that kind being brought under my consideration. What other men may do under particular circumstances I would rather not discuss.

11472. Have you had many cases in which you have fixed specified value or true value?—Since I went to Cork I have only had one case I can call to mind where I was asked to fix a specified value. When that case was called on the solicitor for the landlord told me that he was not prepared with some evidence he wanted to lay before me, and he withdrew it. I have only had that one case since I went to Cork that I can call to mind. I wish it to be understood that I am speaking rather at a disadvantage; I have not had an opportunity from the suddenness of my call here of looking through my notebooks; I am now speaking from general memory and recollection.

11473. Have you had any cases of town parks before you, or many?—Well, I have had some since I went to Cork. I will give you those of which I have a note made from memory; I can tell you what I had and what happened to them.

11474. I will put one or two questions, and if you wish you can illustrate them from your notes; perhaps that will be the shortest way. What

Mr. *Macartney*—continued.

class of people were the claimants in these Town Park cases?—I will give you one now. There were claims made to fix a fair rent for small holdings in the immediate vicinity of the City of Cork; what perhaps I might describe as market gardens; they were small holdings held in the immediate vicinity of the city. I heard those cases, and I formed an opinion of my own on them. It then came out that my predecessor in Cork had had many such cases before him of neighbours of these people who held under the same landlord; and that he had fixed judicial rents on them. I think it always better, if possible, to have uniformity, and I then said: If the matter was *res integra*, if I had to decide it myself for the first time, I would rule them out; but I thought *that* was a fair matter to try on appeal where Mr. Hamilton, my predecessor, had ruled it otherwise, and where the landlord had submitted to his ruling. I would not constitute myself a Court of Review from my predecessor, and I fixed fair rents on them. I had another case in the neighbourhood of the town of Mallow, and there I came to the conclusion that the holding would fall within what we now believe to be the definition of "town parks;" but I came to the conclusion that the mode of dealing with it, and the fact that it was dealt with by a man who was making his living by it agriculturally, took it out, and I fixed a fair rent upon it, but I was reversed by the Commissioners; they held it to be a town park. I think those are the two cases in which the question has been raised before me.

Mr. *W. Kenny.*

11475. Were there any appeals in the Cork cases?—Not that I am aware of.

Mr. *Macartney.*

11476. What is your opinion as to a revision of the Act with regard to town parks?—That is a large question.

11477. This Committee is sitting under a reference to make suggestions, and I put it in the most general way I can; I do not want to put leading questions?—You will excuse me if I answer that, generally I believe the principle of the Act of 1881 is to confine its operations to purely agricultural (agricultural or pastoral) holdings. I will call them all "agricultural;" I would not extend that. If I find a holding held by a trader in the town, and if I find that he is holding that as really part of his establishment for the purpose of giving his family milk or butter or something of that kind, I do not think that is within the intention and scope of the Act of 1881, which, rightly or wrongly, I believe to be confined to agricultural holdings, and I would not extend it to such cases as those I have just mentioned.

11478. Have you had any cases of pasture holdings before you?—No, we do not have many in that neighbourhood. The only other exemption I have had before me is that of dairy farming; I remember one case of dairy farming.

11479. Where is that?—In the East Riding of the County Cork; but that is near the borders of Limerick, near a place called Charleville.

11480. Did

Mr. *Macartney*—continued.

11480. Did you fix a rent in that case?—No, I did not.

11481. On what grounds?—On the ground that it was one of the exempted cases.

Mr. *T. M. Healy.*

11482. Had not we better have this case now in full. Would you give us the name of it?—I cannot; I will tell you that it was heard at Kanturk; Mr. Ryan of Charleville was one of the solicitors.

11483. For the landlord?—I think he was for the landlord; and young Mr. Sullivan was counsel for the tenant. He argued it very well; so well that I took time to consider it.

11484. It is a recent case, then?—It is a recent case.

11485. Can you give us the acreage of the holding?—It is a largish farm.

11486. Was it subject to a lease?—No. I think after that—I may be wrong, but I think they acquiesced in my judgment.

11487. The tenant acquiesced?—His professional men did; they did not appeal.

Mr. *Macartney.*

11488. Can you say, from your experience, whether or not the occupiers of these grazing or dairy farms of a large class make many improvements?—I do not know.

11489. On the question of sub-letting; do you think it would be desirable to enlarge the provisions of the Act with regard to sub-letting?—Rightly or wrongly, I have a great objection to sub-letting. I remember in my youth what sub-letting was in the country, and I remember the mischief done by it; I think that in many places you may create congested districts.

Chairman.

11490. Do you draw a distinction between sub-letting and sub-division. Would you apprehend that all the mischief that, as we know, used to flow from enormous sub-division must be imputed to sub-letting?—I would be afraid of it, though I had not finished my answer. I think that wherever a farmer makes lettings on his holding for men whom he intends to employ, if he does not exceed the number of labourers he may want on his farm, I would not call that sub-letting, I would call that an extension of his farm buildings.

Mr. *Macartney.*

11491. That is the position at the present moment, is it not; you have a discretion under the 1887 Act?—We have, and that is my reading of that "discretion." If I found that a farmer had given houses to three or four men for the purpose of tilling his farm, and that he got labour cheaper by it (I think that is desirable), then I would consider: Has he exceeded what the farm fairly wants? If he has not I would look upon that really as farm buildings and what the man ought to be allowed to put on.

Mr. *Sexton.*

11492. Is it not the fact that the section of the Act of 1887, even for labourers, is confined to sub-letting made before the passing of that Act?—I was asked as to my views of it, not as to the construction of the Act.

Mr. *Sexton*—continued.

11493. Would you extend that provision without limit of time?—The sub-letting?

11494. Yes.—Really I think I would leave that to the discretion of the holder; that is, once I come to the conclusion that he was not doing anything in excess of what was reasonable upon it. I would let him get labour as cheaply as he could.

Mr. *Macartney.*

11495. But excluding the question so far as it refers to labourers, I understand you are against enlarging the facilities under the Act for sub-letting?—I am afraid you are asking me questions now not as a "limb of the law," but as a private individual.

11496. I am asking you to speak from your experience?—My legal experience does not enable me to form any opinion.

11497. In your experience have you had any knowledge of the rents charged to sub-tenants by the occupier of the farms that have come before you?—Yes, and rather startling knowledge.

11498. Will you tell the Committee what that experience is?—I can recollect one or two cases in which men who have fixed fair rents before me have afterwards come and brought actions for trespass against their neighbours; and when they came to prove the damage done to their farms, it was extraordinary how the acreable value of the farms increased; and recently I had a case (I think it was last sessions or the sessions before last) where a man whose rent had been fixed (as well as I recollect it was about a 30-acre holding, and the rent was fixed at something about 15*s.* an acre), set some of his holding in conacre, and he processed the conacre man before me; he sued him for rent, which he put at 10 guineas an acre. I called his attention to the circumstance about the valuation of the farm; then he said this was the very best bit of the farm. Still, there it was.

11499. Assuming that any alteration was made in the law as to sub-letting, would you think it desirable that the Land Commission Court or your Court should have the power of fixing the rent as between the sub-tenant and the occupier of the farm, as well as between the landlord and the occupier of the farm?—I really do think it would; I would give them the power.

11500. Would you be in favour of attaching any other of the statutory conditions to the sub-tenant?—Well, that requires consideration. It is a matter that has never occurred to me before. I have never thought of it.

11501. I do not desire then to press you upon it?—I have never thought of it.

11502. Do agreements fixed out of Court come before you?—I have never had one. I know that there are such cases as you allude to, but I have never had one, strange to say.

11503. Then, from your experience, can you give any information to the Committee?—No.

11504. Are you now speaking of Londonderry as well as Cork?—I am.

11505. Speaking of your whole experience?—I have

Mr. *Macartney*—continued.

I have no recollection of such a case having come to me.

11506. On the question of costs: do you think any complaints are made upon that question?—The costs of what?

11507. Do you give costs in your Court?—No.

11508. I mean to say, do you think the fact of costs not being given to what is called the "successful party" is a matter of complaint?—No; I do not look on the fixing of a fair rent as I would upon a hostile lawsuit. In the fixing of a fair rent the Legislature steps in as between one man and another, and says: "We determine that the contract that exists between you must terminate and we must fix it, and we appoint a Court to fix it." I think they have a right to come and have that rent fixed, and I would not give costs there.

11509. Can you give the Committee any idea what the average cost to a tenant is in your Court of getting a fair rent fixed?—I could not; I believe the costs to be small.

11510. Do you think that the question of costs has at all operated in keeping tenants out of Court?—I have no reason to think so; I have never heard it said that it has. I have such a number of very poor men coming in and getting their rents fixed, an immense number, and latterly in very small cases, so that I do not think so; the costs are really only a few shillings.

Mr. *T. W. Russell.*

11511. What do you mean when you say that you have an "immense number" of small tenants coming in to get their rents fixed. You have had only 155 cases in two years?—In proportion to the number who come. In the County Cork, I have had 207; and before that, for nine years, I have had some thousands of cases.

11512. If it is "in proportion," that is another thing?—Of course I speak "in proportion."

11513. We have been dealing with hundreds of thousands of cases?—Yes, I speak of course "in proportion."

Mr. *W. Kenny.*

11514. And you are speaking with reference to Londonderry cases also?—Yes, the question was large enough to cover the entire of my experience.

Mr. *T. W. Russell.*

11515. You used the word "immense"?—Perhaps I ought not to have used the word; I will be more cautious.

Mr. *Macartney.*

11516. May I take it that in your experience, not only as Land judge, but as County Court judge and chairman of the county, the question of costs is no deterrent to an Irish tenant in litigation?—I have no reason to suppose it to be so. The question of costs is a very small one, it is a few shillings to a solicitor; and with reference to costs too, where I am at present, in a great number of cases, when the case is called on, and the proof given, on bringing it into Court, the

Mr. *Macartney*—continued.

tenant has very frequently, when I have asked him for evidence, said he would leave it to Mr. Heard, the County Court valuer. In a great many of the cases where small men have come in, they have expressed their confidence in Mr. Heard, the gentleman who values for me. Whether that is the result of poverty or not I cannot tell you, but in a great many of those cases they say they are perfectly satisfied with Mr. Heard.

11517. That is to say, I understand, they do not employ any professional witnesses?—They employ a solicitor.

11518. But I mean to say valuers?—No, in a great number of the small cases they do not.

11519. Some complaints have been made to the Committee that there is no efficient system of reporting cases that are brought before the Land Commission. Have you anything to say upon that point?—We have the same system of reporting that the superior courts have got. We have two reports in Ireland; we have a weekly publication, called the "Irish Law Times," which published the cases (I think very fully), and we have the monthly publication of the authorised reports, and of late I find a great proportion of them taken up with land cases.

11520. Do you, sitting as a land judge, feel that you have got sufficient access to the decisions of the higher court?—As far as I know. I have not heard of any important case that has not been reported.

Mr. *W. Kenny.*

11521. But the authorised reports do not send a reporter to your Court, do they?—No, they do not.

11522. They do not report your decisions?—The only reporters before me are the newspaper reporters.

Mr. *Macartney.*

11523. I do not speak of the newspaper reports?—You were speaking of the reports of the Commission above?

Mr. *Leese.*

11524. In the Law Reports and the "Irish Law Times" the only decisions of the cases that come before the Court are those appealed from which I suppose are decisions of the High Court?—Yes.

Mr. *W. Kenny.*

11525. Is not there an occasional reporter in your Court from the "Irish Law Times"?—In some towns there is; and what frequently happens is that one of the professional men reports one of the solicitors.

11526. The report of a case decided by you would appear occasionally whether it went to appeal or not?—Occasionally I have seen such reports. One of the young solicitors, or one of the young barristers, in the Court, will report a case; and I know such cases have been reported; and the "Law Times" publish them. I have seen reports of cases decided by me published in the "Law Times." Those reports are sent up by some of the young men present; they are paid for sending them.

11527. We

Mr. *Macartney.*

11527. We have had some evidence before the Committee as to the desirability of altering the statutory term of 15 years; that is to say, shortening it. Have you any views on that question?—I have formed an opinion upon that. My opinion would be in favour of shortening it. As you have taken me on this question, I would wish to say that I had the honour of being a member of what is known as the Cowper Commission. I sat on that Commission, and on that there was a recommendation to shorten the judicial term to five years, and if you look into the Report (I have it here), you will see that that was a particular suggestion, and for a particular purpose. The late Sir James Caird, who was a member of that Commission, was very anxious that the future rents should be automatic. His theory was to have a short term; to have a judicial report or quotation of prices; and then the finding of the fourth proportion should be that as prices were to that quotation, so should there be a percentage reduction or addition in accordance with change of price, made on the future rent. The Report says "five years," but I think that a term of five years would be too short to carry out that; it afterwards turned out to be impracticable.

11528. Do I understand that your views as to shortening the statutory term depend upon the rents being fixed in some automatic manner?—No; I wish to explain how it is that my name appears to a document recommending a five years' term, because my name does appear as recommending a five years' term, and I want to explain why and how that is.

Mr. *Clancy.*

11529. Do you mean you appended your signature to the Report on the reason given by Sir James Caird?—I have the Report here, and can read the passage out if you like.

11530. Did you agree to Sir James Caird's reasons?—The Report states that we fixed five years, on the assumption and for that purpose, the purpose of getting an automatic fixing of rents.

Mr. *Hayes Fisher.*

11531. Do I understand you to say that that assumption has since been found to be impracticable?—I understand they found it so when that report came to be considered.

Mr. *W. Kenny.*

11532. If there could be an automatic revision, would you still be of opinion that the five years would be advisable?—If that could lead to an automatic revision, I would adhere to the opinion expressed in that report.

Mr. *T. M. Healy.*

11533. I suppose everything that Sir James Caird thought and that you thought is stated in the report, paragraphs 36 and 37?—I think I have the report here. You see at paragraph 37 we recommended the term of revision to be shortened from 15 to five years. Then you see, we say in the next paragraph: "This should be done, however, on a principle, as near as possible, self-acting." That was the object and scope of it. There was a difference at the time; the late Lord Milltown differed altogether, and I only took so short a term as five years for that purpose. I took five years entirely for that purpose. I adhere to the general idea of shortening, but I think five years too short.

Mr. *T. M. Healy*—continued.

Mr. *Macartney.*

11534. Have you any other suggestions to make to the Committee as to the method of fixing fair rents?—No, nothing occurs to me at present.

11535. What term would you recommend?—You have to make very much of a compromise; I would say 10 years.

Colonel *Waring.*

11536. Do not you think that the shortening of the term would lead to a good deal of unsettling of the farmers in their work?—I really do not think so. My object in shortening the term is this, to prevent as far, humanly speaking, as we can, a rent (which may turn out, owing to fall of the prices or something, to be too high) lasting too long.

11537. Do not you see considerable difficulty in the repetition of litigation at such short periods?—I would hope that the litigation would really not be much.

11538. In fact, you would expect that agreements would be come to largely without the intervention of any Court?—I would; and then the intervention of a Court would, I think, be a very facile one as compared with what we have gone through.

11539. I think you have said you do not know very much of the agreements hitherto come to out of Court?—No.

11540. But have you any reason to suppose that advantage was taken of the tenants by the landlords in these agreements?—There has been no such case before me.

11541. Has there been anything to raise that impression in your mind?—Nothing.

11542. Mr. Heard has told us, I think, that he thought the valuation by the County Court valuer would be better to be subsequent to the hearing than before it. Is that your opinion?—You see he is a valuer, and I would be very slow to differ with him. If he says that he could value better after than before, I should be very sorry to differ with his opinion. That is a matter more for him than for me.

11543. Should you agree with him that it would be more satisfactory if there were two valuers?—I think it would give more public confidence in the Court (and now I fall back again upon hearsay), because I heard that cases are removed from the County Court to the Commission by landlords, because they prefer having the operation of two minds to that of one; I have heard that, and therefore it is that I say what I do say.

11544. Have you had any experience with regard to reclamation of land in the cases that have come before you?—There have been several cases of reclamation.

11545. And has that reclamation usually been a costly operation on the part of the tenant?—Sometimes "yes," sometimes "no" Sometimes it

Colonel *Waring*—continued.

it is very well done, indeed, and costly; in other cases it is merely a name.

11546. The latter is the more usual, I suppose?—You go from one end of the gamut to the other when you come to deal with that, as in most other things, I think.

11547. As to the presumption of the ownership of improvements, do you think the tenant suffers any injustice from the present position of the law in that respect?—I am happy to say that the question of presumption I have never had to consider. I have been a fortunate man in that respect.

11548. Do you find that the ordinary run of landlords, in your experience, have kept records of any money or material allowed to the tenant?—On the large estates, where there is a rent office, the record is very well kept; that would be my experience; but I know of many, many cases (I have one or two now before my mind) where the record kept by the landlord was the most meagre thing.

11549. As a matter of fact, has it occurred to you that before the year 1870 there was nothing to suggest to the landlord any reason why he should keep such a record?—I think the only record he then kept was as to whether the rent of a particular "gale" day was paid or not.

11550. Has it ever come before you in any of the cases that allowances in the shape of remissions or temporary reductions of rent were given as a sort of compensation for improvements?—I have known such cases; and then they came in when we came to put a value on improvements.

Mr. *M'Cartan.*

11551. Could you give any of those cases?—I could not. You see I am here at a great disadvantage. I did not know until a few hours before I started that I was to come here, and I have not had an opportunity of looking through my note-books or anything.

Mr. *Sexton.*

11552. Those would be exceptional cases?—Those would be exceptional cases.

Colonel *Waring.*

11553. Do you think you could furnish a return of any of these cases from your notes?—I am afraid it would take some time, because, as a matter of fact, my note-books are scattered.

Mr. *Clancy.*

11554. Can you say whether these are "exceptional cases" or not?—I would say they are exceptional.

Colonel *Waring.*

11555. Do you consider, then, on the whole, that tenants' improvements are protected sufficiently under the present law?—As far as my personal experience enables me to form an opinion, I would say "Yes."

11556. I do not understand this question of pre-emption. You have already given evidence with regard to sub-letting, and about costs?—I have.

11557. You have not been able from your experience to suggest any short or less contentious, or less expensive method of arriving at a revision of rents at the end of the term. Have you formed any idea as to that?—I have not. I was asked just now if I had any suggestions to make.

11558. Yes?—Now you are speaking of the end of the term. I do not know whether I am presumptuous in saying that as far as suggestions go I really think that legislative interference is requisite to define what is to happen at the end of the judicial term.

11559. Have you yourself formed any opinion as to what would happen if such legislative interference did not take place?—I have; but that is a thing that may come before me judicially. I think there is sufficient doubt and difficulty to render it almost necessary that the Legislature should do something.

Mr. *Dillon.*

11560. About the instructions which you give to your valuer: you stated just now that you gave no instructions, except that the valuation should be as minute as possible, field by field, and, when there was considerable difference in the land, acre by acre?—Just so.

11561. That is practically the only instruction you give?—Practically, I think so. Now a case presents itself to me in which a question of this kind arose, and I was talking it over with Mr. Heard, a case where there was a scarcity of water on the farm; I then wished that the report should be a little more minute upon the expense caused by the frequent deficiency of water in dry weather, and how much he would set for the cost, taking one year with another, that is, to put an average upon the cost. Those are really, I suppose, instructions.

11562. But they are not instructions of a general character?—No, they pass between us conversationally.

11563. And only have reference to particular cases?—To guide them in similar cases in the future.

11564. Exceptional cases?—Yes.

11565. But I suppose the way in which he arrives at the value of the farm is by adding up these detailed valuations he makes, field by field?—I see his report, you know. He adds up all those matters, but then as a total figure he deducts from that such deductions as he thinks ought to be made and gives me the result.

11566. He gives you an idea of the deductions he makes?—First of all it might be a deduction on account of improvements; it might be a deduction in consequence either of too much water or too little water. A farm may suffer from flooding as much as from too little water; and it frequently happens that he takes off something for the average loss in some parts. I need not go into the names of the places; you do not know them perhaps; matters like that he will take off.

11567. But those are the only deductions?—I will not say the "only deductions."

11568. I mean in a general way?—Then there comes the question as to whether the tenant has turbary or not. There are many things of that kind.

11569. Let me read to you a passage from a newspaper

Mr. *Dillon*—continued.

newspaper report of a judgment given by the High Commission the other day; of course, this may or may not be accurate, but I want to put it to you whether this would convey your idea of the way in which the rent was settled. This is cut from "The Freeman's Journal." I have not got the date of the judgment. It refers to a case of Kevin Doyle (tenant) *v.* Sir George Young (landlord), and the judgment was given recently, within the last three weeks?—It must be a recent case, for I do not remember the name.

11570. It is only published as a newspaper report. Now here is the law as laid down by Justice Bewley: "The Court valuer was of opinion that the value was 105*l.*, but in his report he stated 103*l.* 8*s.* 4*d.*, that is to restore the judicial rent. Now the law is, no matter whether a person may approve of it or not, that the rent is to be assessed on the value of the land as it stands"?—What I will say to that is, that every judgment must be read *secundum propriam materiam.* I must first know the question before the Court. Before I express any opinion upon the judgment delivered, I should have all the facts upon which to express an opinion. Of course I am bound by the decision, but as to whether I approve of it or not, I cannot say unless I see the facts upon which it was founded.

11571. You stated just now that you saw the deductions made by your own valuer from the value put upon the farm; you see in his report the detail or the deductions made?—Yes.

11572. In any case, did you see him make any deduction for the occupancy right of the tenant?—I do not understand that really.

11573. You never saw entered, as a head of deduction, the occupation right?—Do you mean that after fixing the fair rent, I should then make a deduction because the tenant has got fixity of tenure?

11574. You have stated now the way in which your valuer proceeds?—Yes.

11575. You see it is a very interesting thing to the Committee, in view of the evidence, to ascertain the method by which the fair rent is arrived at?—I want to understand the question. You asked me whether he took any deduction off in respect of occupancy.

11576. I will make it as clear as I can. You explained to the Committee how he arrived at his valuation, by valuing in detail and adding up?—Yes.

11577. Then you explained to the Committee that from that gross value he made certain deductions to arrive at a fair rent?—Yes.

11578. A deduction for the tenant's improvements, and for certain other circumstances connected with the farm?—Yes.

11579. Does he ever deduct anything in respect to the occupancy right of the tenant?—No, I never saw it; I never heard of such a thing before. Since the commencement of the Act I have been administering it; I have had a great many professional men, some of them men of eminence, arguing before me, and I never heard one of them ask that such a thing should be considered.

11580. You never heard it raised?—I have never heard it raised; and if that were to come in as an element, I rather think I should value the rent upon a different basis. I should then take the rent from which I was to deduct, more or less, as being the competition rent. You are asking my opinion.

11581. That brings us back to the point. Do you direct the valuer as to how he is to value?—As far as that deduction to which you allude; I never heard of it; it has never been put to me by the Bar.

11582. You stated just now that if you were directed to make a deduction in respect of the occupancy interest of the tenant you would value the rent in the first instance on a different principle?—I am giving you what occurs to me at the first blush. As I understand it it is this: The tenant has a fair rent fixed, and from that is to be deducted something because he has a fixity of tenure.

11583. No; my object is to ascertain the method of procedure by which the valuer arrives at a fair rent?—If you ask whether he has ever deducted anything for occupancy, I know this (and to this extent there is instruction), that we never take the gross rent as a competition rent, that is, not what the landlord could possibly get if he put it up in the open market; we take the rent as what the occupying tenant should (and ought to) pay a solvent man, living on and getting a fair return for himself out of the farm. We do not consider what, if it was put into the market, it might bring as rent; and I think if we were once to go on making those deductions in respect of occupancy that would be a large question. If such a question were raised before me, I would have it argued on both sides (because it is perfectly new to me) and take time to consider and deliver the best judgment I could.

11584. You have stated that you would value the land on a different principle if such a question were raised. I asked you in the beginning, have you given any instructions to your valuer as to the principle on which he is to value the land except that he is to be minute and accurate?—That is all.

11585. Therefore we are to conclude that the valuer values the land as he explained to this Committee that he did?—He values the land on what an occupying tenant, not a competitive tenant, but a solvent man in occupation, ought to give, leaving himself such a margin as he ought to have.

11586. That is not his evidence?—That is the way we do it.

11587. You have given him no such instructions, do not you state that?—Forgive me, general instructions; I have always understood that that is what he did.

11588. It is not his evidence to the Committee. Let me direct your attention to his evidence. I asked him a question myself upon this particular point. At Question 9531, I ask him: "Can you tell me what principle is present to your mind in fixing a fair rent." The question goes on: "I will try to make the question clearer to you: We have had here mentioned a number of rents; we have heard of an economic rent; we have heard of a fair rent; we have heard of a fair competition rent; and we have heard of a competition rent, and some Commissioners have said

Mr. *Dillon*—continued.

said that their idea of a fair rent was a competition rent, with an allowance for the tenant's improvements. You say that in fixing a fair rent you never have the least reference in your mind (you do not think) to a competition rent?—(*A.*) Yes. (*Q.*) What do you think of?—(*A.*) I think I may explain it thus: I go upon a farm and I find that farm would support five or six cows; I know what those cows ought to give and what they ought to give in the year; I check my section-rent by that, each field, and I check the stock-rent; I check one by the other." Then, in answer to subsequent questions, he goes on to apply the principle upon which he acts, and it amounts to this, as you will see from the evidence, that on an average dairy farm, he gives two-fifths of the gross produce to the landlord, and on a tillage farm one-third, as close as he can go?—Well, I suppose that is so.

11589. But his evidence is, that he had no reference in his mind to the question of a competition rent or occupancy rent?—But it is not right to say that he takes that into consideration, competition rent, because he does not. You see a competition rent will be larger than the rent you are charging to the occupying tenant; no doubt the competitive man will pay something to get into possession.

11590. That is not his evidence. His evidence is entirely inconsistent with that?—I think he has not put himself very fairly before you, for I can answer you as to that.

11591. How can you "answer" if you have never given him any instructions?—I have never given him any instructions; but we have talked it over, and he has often said, if that farm was in the market it would be so many pounds a year more.

11592. You have had a good deal of experience now of land cases, though you are not an agriculturist yourself?—Oh, no. I am not an agriculturist.

11593. Would you say he would give one-third of the agricultural produce?—Upon that I form no opinion. I am here now as a lawyer, and I am not a farmer I am happy to say.

11594. Your evidence is, however, that you have given no general instructions to the valuer?—That is right.

11595. He has instructions. Then I think we must accept his own statement of his method as given in evidence?—He never puts down what we call a competition rent; for often and often when speaking of the rent he has said to me, over and over again, "If that farm was in the market or put up to-morrow for sale, it would produce 4*l.* or 5*l.*, or something more."

11596. Are you aware that we have had a great deal of evidence drawing a difference between a competition rent and a fair competition rent. Do you draw that distinction?—The only rent I ever believe I am dealing with is that which ought to be charged to the man in occupation.

11597. What I want to come at is this: Have you got any principle to guide you in drawing a distinction between the rent which ought to be charged to the man in occupation, and that which ought to be charged to a stranger?—No, I have not.

Mr. *Dillon*—continued.

11598. None whatever?—No.

11599. Do you draw any distinction, for instance, such as to 20, 40, 50, or 60 per cent.?—I do not think it is necessary that I should do that.

11600. Then how can you fix the fair rent?—The only matter I know is, that, as a general rule, if this farm was put up to auction for a tenant, the landlord would get more than he is getting now.

11601. How much more?—I have not the most remote idea.

11602. On what principle do you act; what idea is present to your mind? When you proceed to fix a rent on a sitting tenant lower than you would fix on a stranger, you have not the slighest idea, and can give us no idea, what percentage lower you fix?—I do it because I hear that, as a general rule, if there was any freedom of sale, that is to say, if the county was in a different state, and the farm was put up to auction, it would bring a great deal more. The only thing I deal with, and that I try to deal with, is this: I have the man here in possession; I am not going to consider in his case what this farm might bring if it was put up to auction; I am merely dealing with him as a man there in occupation, and I deal with the rent, as supposing him to be a solvent man, and what he ought to pay for it, leaving him a sufficient margin.

11603. Leaving him a sufficient margin?—Yes; that is, a sufficient margin according to his position in life, and the position of his farm.

11604. I confess I fail to understand how, on that principle, you fix the fair rent?—I could not give you a mathematical definition. I do not think the thing is capable of a mathematical definition.

11605. Would you accept that definition that I have read out to you; that the land must be valued as it stands?—I apprehend that is what I am doing.

11606. You value the land as it stands?—I believe so. It may be my stupidity, but I fail to follow you. I think that is what is done.

11607. At all events, neither you nor your valuer have ever made any deduction from the valuation of the farm in respect to the occupancy right of the tenant?—I have not done it, or been asked to do it.

Colonel *Waring.*

11608. Under that name?—Or under any name. However, I do not clearly understand what it means, you know.

Mr. *Dillon.*

11609. Now I want to ask you a question or two in reference to the Report, and your evidence about shortening the judicial term. You said that Sir James Caird was in favour of shortening the term to five years in the hope that rent would be fixed in the future automatically?—Yes.

11610. And you gave as his idea, that there should be a sum in proportion, namely, that as the previous rent was to the prices so should the new rent be to the prices?—I think you will find

Mr. *Dillon*—continued.

find that it is explained in the report; it is all on the face of the report.

11611. Do you think that would be a fair way in which to calculate the rent in relation to the fall of prices?—To settle rent by prices?

11612. No; to settle it in direct proportion to the fall; for instance, to put it concretely, do you think it would be a fair suggestion to make to a farmer, where the prices fell 20 per cent. all round, that 20 per cent. should be taken off the rent?—That is not a question of law.

11613. That is not a question of law?—I do not think that is a question of law, is it?

11614. No?—I wish to confine myself to law. I have never acted as a land agent, and I am not an agriculturist.

11615. You sat on the Cowper Commission?—Yes.

11616. Did you sit there as a lawyer?—I was there as a legal member of that Commission. I was very much guided there by the opinion of Sir James Caird, who was a very eminent authority on these subjects.

11617. Who stated afterwards that that was found to be impracticable?—So I understand.

11618. What had he reference to when he said it was found to be impracticable?—I heard afterwards that it was found to be so legislatively difficult that that was not carried out; whether that be right or wrong I cannot tell you.

11619. Then it is only hearsay?—It is only hearsay.

Mr. *Macartney.*

11620. And that "hearsay" report referred entirely to difficulty in Parliament; legislative difficulty I mean?—I remember speaking afterwards about it (I do not wish to mention names), and I understood there was a difficulty in a sufficiently accurate ascertainment of prices on the subject, and that there was some Parliamentay difficulty in the way of doing it.

Mr. *Sexton.*

11621. Was the nature of the difficulty explained to you by the gentleman you do not care to name?—Except in general terms.

Mr. *Dillon.*

11622. You expressed your opinion that the judicial term ought to be shortened to 10 years?—That is my idea; I would do that.

11623. You thought that was necessary for fear rents might be oppressive?—I would do that very much as a matter of compromise, because there is dissatisfaction. I know a great many people think that 15 is too long; a great many people think that, and men whose opinions I value.

11624. Are you in favour of the view that when the period comes for revision the cases should come before the Court again?—If it were possible I would rather they did not, but I do not see how you can shut people out from a judicial ruling, because you have interfered with the right of contract between man and man; and where you do that you must have an authoritative solution, I think.

11625. You said you were in favour of continuing the right of appeal; are you in favour of

Mr. *Dillon*—continued.

continuing the right of appeal on the question of value as well as on questions of law?—Certainly; I have a very strong feeling against allowing any Court of first instance to adjudicate upon them without being appealable.

11626. Will you explain why you think an appeal on questions of value ought to be maintained?—It is the same explanation that I gave before. I do not care whether a man is a Commissioner, a County Court judge, or a Superior Court judge; I think if you make him autocratic the tendency is not what is desirable; and the consciousness that he is appealable and that his opinion is capable of revision tends to keep him straight; and I think that the very fact that it is so will give more public confidence in his ruling. If people believed, "There is Mr. Smith, he is a little Almighty," I do not think there would be the same confidence in his ruling.

11627. Do you think that the machinery of the Superior Court (that is the Land Commission) is better constituted, and that the Commissioners are as well qualified to judge of questions of value as the Sub-Commissioners?—I am not a member of either of those Courts, and I am not at home in their working; but the Legislature having put it there I must assume that it is right.

Mr. *W. Kenny.*

11628. We have heard a great deal of evidence already, and questions put to you with reference to the competitive and fair rent, and we have been told by witness after witness that there is a considerable difference between the two, between the rent that would be charged by a landlord to a stranger in the open market and the rent that would be fixed upon a sitting tenant. Now, in fixing rents, do I understand you to say that the same considerations are given by your valuer and by yourself in arriving at a decision as to the amount of rent to be fixed?—Certainly; we never consider what the farm would produce if put into the public market. We merely say what is it worth as it is there.

11629. As I understand, you never put upon the sitting tenant the rent you would put upon the stranger?—No.

11630. Are you able to give us at all what would be the difference between a competitive rent and a fair rent?—I am not.

11631. Would you agree with some of the evidence that has been given (particularly by Mr. Bailey), that there would be a difference of 30 per cent. between them?—Mr. Bailey has had a great deal of experience; I would not either agree with him or differ with him, because I have not been watching these matters. I do not know really how things are going; my attention has not been called to the matter.

11632. Whatever we may call this thing, "fixity of tenure," or "occupation interest," without referring to it *ex nomine*, it is taken into consideration in fixing the fair rent?—To this extent: we fix a fair rent, as you have already asked me, on the man who is, as you call him, the "sitting tenant," and not as on a man who is coming in.

11633. Giving the sitting tenant a special ad-

Mr. *W. Kenny*—continued.

vantage by reason of his being in occupation of the land. I will put it to you in this way: taking into consideration as you do the fact of his being the sitting tenant, if you had afterwards to consider this occupation interest (whatever it may be), and you made an allowance in respect of that, would you not be allowing the occupation interest twice over?—I would; and I think I stated that just now, that if I come to make such an allowance as I understood the honourable Member on your right to allude to, in all probability, as at present advised, I would find myself called upon to consider, not the occupying rent, but the rent which you call "competitive." Rightly or wrongly I am answering these questions upon a subject that has come upon me at the first blush.

11634. In fixing a fair rent you do not consider this occupation interest by that name, but as I understand, you simply consider what a solvent tenant ought to pay, leaving him a fair margin?—Yes.

11635. Now, I want ask you a word or two with reference to improvements?—With reference to that, perhaps I have been asked a great many questions as to instructions to my valuers, and all that. I have always impressed upon them, and do (and, really, now it has become unnecessary), that when we come to consider the margin there ought to be left to the tenant we must remember (and I am very glad of it) that men live better and clothe themselves better now than they used to do, and I take into consideration their improved method of living (which I am happy to say has taken place) in that way. They live better, and are better clothed than when I was young man in Ireland.

11636. You attribute that to the effect of land legislation?—Whatever I may attribute it to, I know this, that people in the country are better fed, better taught, better housed, and better clothed now than at any other period I remember.

11637. As I understand, you do not give any directions to your valuer as to valuing?—No.

11638. But if a question of law arises, when do you dispose of the question of law; is it after the valuation is made, and when it comes before you?—He has this instruction from me (if you wish to call it an "instruction"): I tell him, "If anything like a question of law is raised before you when you are there, I wish you to deal with the whole thing as if there was no law; make a note with 'law' before it, and deal with the whole thing, and let me deal with the point of law." He has that instruction from me: "You are not to exclude that, because a question of law may arise about it. I want you to deal with it as a valuer, and leave me to determine whether in law it ought or ought not to be considered."

11639. Does he, in cases of that sort, state the facts in such a way as to enable you to come to a decision upon any question of law as it may arise?—No; what he does is this: he says, "This is probably a question of law." I hear the evidence on both sides, and work that out for myself. Really my land cases take me a very long time, for I take very full notes of them.

11640. Is the report made by the valuer to you upon the question of fair rent an elaborate report, giving you all particulars for the purpose of enabling you to come to a sound judgment?—Yes, it is very full.

11641. Does it deal invariably with the question of improvements?—His value is not the only thing, for in my own notebook I take down everything that the tenant's valuer proves before me; I take down every word that the landlord's valuer proves before me, and occasionally I have recalled them, after considering the case before me from my notebook; occasionally I recall them to enable me to arrive at a conclusion as a juror sitting between them. I look upon myself then as being in the position of a juror finding a verdict between those different gentlemen.

11642. When your valuer has reported to you that there have been improvements made by a tenant, and that there has been an increased letting value as a result of those improvements, have you had to consider at all, having regard to the case of Adams *v.* Dunseath, how that increased letting value is to be distributed?—Two or three times I have. That is not an easy question; that is by no means an easy question.

11643. I would like your explanation, but just before coming to it I would like to ask you this: Do you in every case where there is increased letting value, allow in the first place to the tenant a percentage upon the improvements he has made?—That is the first thing to be done.

11644. Now continue your explanation, please?—Then comes the question: who is to derive the benefit, and in what proportion, of the improved value? Much the larger proportion of that, in my opinion, should go to the tenant. The proportion that ought to go to the landlord must vary according to different circumstances; the amount of labour that was required; the character of the improvement in itself, and all that; but as a general rule (I do not like giving figures, you will take me now as merely giving them at haphazard) I would say I would give three-fourths of that to the tenant.

11645. You would give three-fourths of that to the tenant?—Yes.

11646. That is your practice?—I will not say I measure it by three-fourths.

11647. But speaking roughly?—Speaking roughly, I daresay it would average about that. Then the other I give to the landlord, because I believe, rightly or wrongly (of course, I am open to correction upon that if I am wrong by the Court of Appeal), the capability of improvement in the land is the property of the landlord, in respect of which he is entitled to get something.

11648. Of course you do not give the tenant interest upon the whole of the outlay that he proves before you; you ascertain, in the first instance, whether that outlay has created an increased letting value?—If it has not made an increased letting value it is not an "improvement" at all.

11649. If it has not made an increased letting value it is not an improvement at all, although the tenant may have expended money upon it?—

Under

Mr. *W. Kenny*—continued.

Under this Statute, as I understand it, I do not believe there is an "improvement" then; it must add to the annual letting value if it is an improvement.

11650. It must add to the annual letting value?—Yes.

11651–52. Can you tell us what the percentage is that you allow upon what is proved to be the tenants' improvements which create the increased letting value?—Never less than 5 per cent.

11653. How far have you known it to go?—8 or 9 per cent. Where I find that it has been really a difficult work, and that it has been done in a good workmanlike manner, I would give him more than his 5 per cent.; it depends very much upon the character of the work and the way it is done.

11654. Now, we have heard from a great number of witnesses here that as a general rule throughout Ireland, as soon as that percentage is laid upon the improvement there is little or nothing left to distribute at all between landlord and tenant; and in fact one witness used the expression that he considered the allocation of the increased letting value over and above the percentage is a purely academic one; do you concur in that?—I do not like to lay down a general proposition; but I have known cases where there was nothing after allowing the percentage. You will take me as confining my answers to my own experience; I do not know what other men will find; and then again I wish to call attention to the fact that I am now being examined very critically upon a difficult subject without any preparation, after just getting a few hours' notice by telegram, that I was to be here.

11655. Could you tell us anything upon the subject of the deterioration of holdings?—Now you have come upon a very difficult subject, for I have had cases of deterioration before me lately. There I felt that I was doing a hardship to the landlord, and I could not help it. I believed myself bound to fix a fair rent upon the land as my valuer saw it. I am upon really one of the most difficult questions I have to deal with, cases of deterioration.

11656. And in those cases of deterioration that came before you, did you, notwithstanding the deterioration, fix a rent as if the land had not been deteriorated?—I did not. It is a question that I hope to have argued before me some day. I fixed the rent on the land as my valuer saw it; but I felt, and still feel, that those were cases in which a hardship was done to the landlord.

11657. The tenant in those cases got the benefit of his deterioration?—Well, there again is a difficult thing. The tenant had run down his farm. The deteriorations I speak of are cases where a man has been meadowing year after year; where a man has been taking white crop after white crop, and in that way he has deteriorated; it has deteriorated in his hands. The only thing you can say is that he has got whatever money value (if any) arose out of it in his pocket.

Mr. *T. M. Healy.*

11658. He and the landlord?—Well, he and the landlord, certainly. It is a question I am most anxious to hear well argued.

Mr. *W. Kenny.*

11659. But it comes to this, does it not, that if the tenant by a process of exhaustion, after a number of years has deteriorated the land, your valuer will fix the value of the land as he finds it?—I do not see what else he can do.

11660. Is not the necessary result of that that the tenant has got the benefit of the exhaustion of the land?—He has got the benefit of the over-cropping, any benefit there is. I am not sufficient of a farmer or agriculturist to tell you what that amounts to.

Mr. *Fuller.*

11661. How would you suppose it would affect the tenant in the future if he had deteriorated the land in his hands?—I think he has injured his own prospects.

11662. Exactly; and himself more than his landlord, I should think?—My difficulty is this: I am afraid I am holding out a bad example of this kind; "Tim" would say that "Pat" has got his farm cheaper by doing so; and in that way I am afraid it may have a bad effect. I tell you what I have done; but I should like to see some solution or way out of it, and at present I do not see any.

Mr. *W. Kenny.*

11663. We must clear up this which has been put to you: Who is the person injured by the land being valued in the hands of the tenant as it is after deterioration?—I think, the landlord.

11664. Of course it is the landlord. Is not there a lower rent fixed, in consequence of the deterioriation, for the 15 years' term?—There is a lower rent fixed for the landlord than would have been fixed if the farm had been properly cultivated and tilled.

11665. And for the 15 years' term fixed by the Land Commission he pays that lower rent?—He does.

Mr. *T. W. Russell.*

11666. Have you read the evidence given before the Committee at all?—No, very little.

11667. Are you aware that every Sub-Commissioner that has been examined has distinctly stated that they would not allow the tenant for deterioration, and that they would take very good care the man should suffer for his deterioration?—I am very glad to hear it. We have only had two or three cases of deterioration lately, and those from a particular part of the country; the valuer called my attention to it, and in one or two of the cases I reduced his valuation.

Mr. *Hayes Fisher.*

11668. Are you aware that your own valuer stated that the landlord would be the sufferer in a case of deterioration?—I say so too. My difficulty is what I am to do, having regard to the language of the Statute; I am to administer the law, and not to do what I would wish to do. I look upon it as a most difficult question.

Mr. *W. Kenny.*

11669. I quite agree with you?—I do not wish to be misunderstood; when I am speaking of deterioration, I am speaking of exceptional cases; I have only had a few in one particular part of the country.

Mr. *Clancy.*

11670. One or two altogether?—I think I have had three or four.

Mr. *W. Kenny.*

11671. At any rate, whatever the number is that has come before you, you have adopted a uniform rule?—I have, in doing what I believed to be my duty.

11672. In any of the Cork cases that have come before you has there been any evidence of contribution otherwise than by remission of rent by the landlord for the tenant's improvements?—Oh, yes; I have had cases before me of buildings where the question is: Does the landlord claim the buildings? Then it has turned out that the buildings were built by the tenant, and in many cases I have found that the tenant built the walls and the landlord gave what is called slate, and he gave the roofing (the slate and the timber for the roof); and the same observation applies in the case of out-offices, where the landlord gave zinc or corrugated iron for the roofs they put on; then you take the value of each and give the tenant his value.

11673. Did you allow anything to the landlord for what he contributed?—Very little; I look on it that the improved security he has got for his rent by that little contribution has recompensed him.

11674. I think you told us that you considered yourself rather fortunate in not having any dispute in any of the cases before you upon the question of the presumption of improvement. In your experience do you find that the tenants have any difficulty in proving the outlay that they have made upon the improvement?—As far as I am aware, he has not; of course he may have done things that I never hear of, but in those that he has brought before me I have not found any difficulty.

11675. You have said that on the big estates, of course, records are kept?—Yes; records are kept.

11676. But when you come to deal with the smaller estates, small landlords, do you find that the tenants are quite as well equipped in the way of proof as the small landlords?—I will not say "quite as well," because, after all, the landlord has books of some kind or another.

11677. What is the class of evidence that the tenant usually gives upon the subject of improvements; is it the evidence of his labourers, coupled with his own direct evidence?—That depends very much upon the age of the improvement. If it is drainage, why then the valuer opens the drain here and there, studies the outlet of the drain and all that, and then he forms his opinion as to whether there is a sufficient outlet in the drains for main drains. There is a good deal of technicality in all those things. The fact that the drains are there, and the fact that the tenant says, "I did the work," has been quite sufficient; and the landlord has notice that it is going to be claimed for; it is put on the back of the originating notice; he has notice that the tenant is about to claim that improvement. I do not remember a case in which it has been disputed. I have never been thrown back upon the doctrine of presumption myself.

Mr. *W. Kenny*—continued.

11678. When your valuer goes upon the land, is he accompanied by the representative of the landlord and of the tenant, or is he unaccompanied?—Before he goes he sends notice to the landlord and the tenant that he will be there on such a day. He has that instruction from me that he should give notice beforehand; if possible, three days' notice; and very often he gives more. He gives notice the moment he himself gets notice that he is to go. As a general rule, he has someone representing the landlord and the tenant with him; sometimes he tells me the landlord does not meet him; but, as a general rule, both parties are before him.

11679. And then the tenant points out what he alleges are his improvements?—Yes.

11680. And your valuer tests his statements on the land?—Yes.

11681. I do not know whether you can tell us anything about the changes in the rents that were fixed since 1887 as compared with the previous years?—If I had looked into it a little I could.

11682. Speaking roughly and generally, do you find that you are obliged now to fix lower rents than you would have fixed previous to 1887?—No, not before 1887.

11683. Well, 1886?—Oh, yes; before 1886 I do.

11684. Do you attribute that to the fall in prices?—For what my opinion is worth, I do attribute it to the fall in prices.

11685. One question upon the subject of town parks. Have you considered this question of town parks, and the advisability of at all extending legislation with reference to them?—I will give you the same answer as I gave to the gentleman who asked me about that before. With reference to town parks, the way I look upon it is this (I would rather speak in general terms than be talking of particular instances): The framers of the Act knew what they were about; they understood the question they were dealing with, and they laid it down in the Statute that they were only dealing with agricultural holdings. A town park, as I understand it, is not an agricultural holding. The framers of the Statute (and I must suppose that the lawmakers understand what their duty is) took the same view of it; and I think they are right, because if a man living in a town takes a field near to the town (as I said before) for the purpose of enabling him to give butter and milk that he can rely upon to his family, and has a horse, and wishes to have some outlet for the manure of his stable, and all that, and that it really makes a part of his own establishment, I do not call that an agricultural holding.

Mr. *M'Cartan.*

11686. You are aware that they would not deal with leases in 1881, but that they had to do that afterwards in 1887?—I was one of those who recommended that they should, but I do not think the same reasoning would apply, because once it is said that they are to deal with agricultural holdings, a holding did not cease to be agricultural because there was a lease.

11687. Is

Mr. *T. W. Russell.*

11687. Is it not the fact that the one was a contract under seal, the other nothing of the kind?—I suppose there was something under seal.

Mr. *T. M. Healy.*

11688. You recommended, did you not, that all town parks should be abolished that were less than five statute acres in size, and adjoining towns containing less than 5,000 inhabitants?—We did that because we thought it would be well to put a definition of that kind in the Act, rather than leave it to the arbitrary judgment of individuals.

Mr. *W. Kenny.*

11689. Does the question as to the class of persons who would be the owners of these town parks enter into your mind and influence any observation you make?—I do not think so.

11690. I think it was you that decided the case of Crookshank *v.* Law?—I did indeed decide that, and the Commission reversed me, and the Court of Appeal set me up again; I remember that case; it was up near Portrush.

11691. I remember it also, as I argued it?—I remember the Land Commission reversed me, and the Court of Appeal reversed the Land Commission. That was rather a peculiar case.

11692. That was the case of the solicitor tenant. We have had all the facts of it?—I did not decide it as I did because he was a solicitor.

11693. But he was a solicitor?—He was a solicitor. He had built a very fine house. Between him and the sea there was a bit of sloping grass land, which he wished to take in as a little bit of pleasure ground for his house; he also had the terror before his mind that another gentleman was in treaty to get a building lease for that bit of ground, which would build him in from the sea. I remember the case very well.

11694. I do not know whether you can tell us anything about the sales of tenants' interests, where tenants have had rents fixed. Can you tell us anything about the amounts for which these have sold in the open market?—All I know about that is that I see in the newspapers that such-and-such lands have been sold at such-and-such prices. I have no other means of knowing anything about it. I see in the papers that are open to all of us the large prices obtained for tenants' rights sold; that is all I know.

11695. I do not know whether you know that there have been a good many cases in Cork?—Yes.

11696. In the local Cork papers?—Yes; those are the papers I principally read.

11697. Have you observed how many years' purchase are obtained under these judicial rents?—I have not. I merely look at it and pass on. I am afraid I have not been giving that exhaustive attention to these subjects that I ought to have given.

Mr. *Sexton.*

11698. I think you said that there is no arrear in your Court?—No, there is not.

11699. But there is next to no business in it?—Next to no business.

11700. Yes; land business?—I am giving you the fact that within two years I have had 207 cases.

11701. Last year, according to the Return, you heard 62 cases?—I am giving them to you up to date from July 1892 to July 1894, since my appointment. How they are distributed, I cannot tell you.

11702. There seems to be a tendency rather to remove business. Whilst you had only 62 cases last year, I see there were 248 appeals from you?—That could not be, you know.

11703. From the whole county?—There are two ridings in the county, East and West. They are, you know, separate. Since I sat in the East Riding of Cork there have been 38 appeals in the two years. I have actually heard and determined 155 cases in those two years, and there have been 38 appeals.

11704. It would seem that in the whole period since the passing of the Land Act, out of about 4,500 cases lodged, nearly 3,000 of them have been taken up?—I cannot tell you. I know there have been some statistics published lately about returns which have given great dissatisfaction in the Peace Offices, and other places.

11705. That is another matter?—I really could not tell you anything about that.

11706. Are the cases taken up from you as of course when the landlord wishes?—I believe so. I believe the moment he serves his notice of the wish to transfer from one court to the other, unless the tenant shows cause, it goes up as of course. I believe that is the practice.

11707. The result is that in 1894 there were 60 cases only in the whole of Cork left to be tried in your Court?—I think there must be some mistake in that.

11708. I am giving you the official figures. I am giving you the record from the Peace Office?—I am sorry they did not distribute the 207 cases for the two years. Any information I can get you with reference to the figures, if you will only let me know, I will have it done the moment I get back.

11709. Kindly send them?—If you will allow me to take down, by-and-by, the information you wish to get, I will do so.

11710. About arrears, the Lord Chancellor says that in the two Ridings, from the 29th August to the 29th March, the Land Commission show, according to their record, 2,034 cases in arrear. It appears that your clerk of the peace does not send the orders?—There was some confusion about that. I remember the Lord Chancellor sent round a circular about that. The moment I got a copy of that circular I sent for the clerk of the peace, and between the Peace Office and the Commission people there is some friction or other; I do not know what it is. Each party throws the blame on the other. The Peace Office say that they have forwarded everything; and all I can say is, as to the Peace Office in the County Cork, that I do not believe there is a better clerk of the peace anywhere.

11711. Have you power to instruct the clerk of the peace?—Certainly; he is an officer of mine.

11712. Have you instructed him to send the orders forward?—The moment I got the circular

Mr. *Sexton*—continued.

that the Lord Chancellor issued I sent for him at once and asked for an explanation, and he satisfied me that there was no default in his office. Rivalries take place between the offices that I really do not understand. Any gentleman who is acquainted with Cork would know that we have a most efficient officer indeed in the clerk of the peace there.

11713. You have said that you have no experience as an agriculturist?—No.

11714. Have you had any experience as a landlord?—I am a very small landlord, I am sorry to say.

11715. Have you any tenants?—I suppose I have about 17 or 18.

11716. What county; Kerry, I think, is not it?—Yes.

11717. Are they statutory tenants; have they come into Court?—Some are statutory, some are not. I have some tenants who would not go into Court, they would be afraid of their rents being fixed higher.

11718. Afraid of what?—I think they would much prefer their rents as they are.

11719. Did those who went in get reductions?—Small reductions.

11720. Do you give abatements?—Large abatements.

11721. You do?—I do; in the bad times I gave large abatements, which I have continued.

11722. What abatements, may I ask?—I gave up to about 30 per cent.

11723. There appears to be a very curious difference in practice between yourself and the County Court Judge of Kerry?—I have read Judge Shaw's evidence, and reading from his evidence (Mr. Morley was kind enough to send it me last night), it appears that there is a very great difference in practice.

11724. He acts invariably upon the report of his valuer?—So I see.

11725. After the case is heard, he asks the valuer whether the hearing has made any impression upon his mind, the evidence?—So I gather from his evidence.

11726. And he accepts the mind of the valuer as to any change that should be made, so that, in point of fact, in Kerry the Judge takes the evidence and the valuer hears the case. Is that a fair inference?—Well, I would rather not speak about that.

11727. At any rate, in Kerry that appears to be so?—You have Judge Shaw's evidence before you, and you will excuse my saying that I do not wish to comment upon it. I think my own the better practice; that is all I say.

11728. The valuer sits with you in Court?—Oh, yes; he sits with me on the Bench.

11729. Do you ask him what impression the evidence has made upon his mind?—Always; and I have his notes before me: "The farm of Blackacre, field No. 1"; and so on. You know there are maps. I take it field by field. If I see much difference between him and either of the valuers before me, I at once call his attention to it, and ask him to give me an explanation about it; and then very frequently, if there is much difference, I call the attention of the party valuers to it, and I hear what they all have to say. I take the fullest possible note I can of it; then I consider it as a juror sitting between expert witnesses; I do the best I can between them.

11730. Do you ask him to put into figures the effect of the evidence on his mind?—I do.

11731. You know you are not an agriculturist?—No. Sometimes I do ask him to do that, and he has done it, and sometimes I have reduced his value.

11732. As a rule do you accept what he suggests?—As a rule; I do not accept it because he has said it; I accept it because, as a rule, I think it fair, having heard the case.

11733. No; but as a matter of practice?—As a general rule I find that he is a very fair man.

11734. Are you speaking now of Mr. Heard?—Yes, of Mr. Heard.

11735. He told us that he valued for the landlords up to 1881?—I did not know that.

11736. You never inquired?—I never inquired. I found him there when I went to the county, and I continued the staff; I would continue him until I saw reason to get rid of him.

11737. I understood there were two valuers there before your time who have not been employed since, Mr. Roberts and Mr. Byrne?—Mr. Byrne has had a serious attack of illness.

11738. Mr. Roberts?—Mr. Roberts I have never employed. Is he still a valuer?

11739. That is what I am asking you?—I have never employed him.

11740. In selecting a valuer, you never asked whether he had been in the habit of valuing for landlords before?—What I generally try to do is to get the valuer who is most conversant with the district. Now there is a place called Kanturk.

11741. I do not think you need go into details?—I want to tell you what I am doing. There I did ask the Commissioners (and they have done it for me) to appoint a gentleman, Mr. Maloney. I did that because he resided in that part of Ireland; he was strongly recommended, and I believed he would give great confidence and faith in the district if he were appointed a valuer. He was appointed a valuer, and he sat with me last Sessions. He is acquainted with large agricultural farms and grass holdings, such as they have there. I thought it advisable to have a man living there, as Mr. Maloney, and I got him appointed.

11742. Practically it would appear that the opinion of the valuer is as potential in your Court as in Kerry, in the long run?—I will not say that.

11743. So far as value is concerned?—I differ from him, and have differed from him. I sometimes reduce his valuation.

11744. Much?—No.

11745. You say that Mr. Heard is usually employed by you?—Yes, by me.

11746. You also say that the question of presumption does not come up before you; the improvements of the tenant are not questioned?—What I said was this: that what lawyers call the doctrine of presumption I have never had to draw upon, or to apply it to the cases before me, for

Mr. *Sexton*—continued.

for any improvements that have been dealt with before me have not been questioned. I have really found that the landlords there have not been standing in the way of the tenants coming in. I rather think they have been giving every encouragement to the fixing of judicial rents, as far as I can see.

11747. Do you see any objection to a rule of law that the presumption should be that the tenant had made the improvements, visible and valuable, unless there was proof to the contrary?—I should like to consider that a little before I answered it.

11748. I understand from your practice that is what turns out to be the case?—Practically it comes to that, but I do not think myself there would be much harm in that.

11749. In making the law according to the facts?—I do not see that there would be much harm in that. When I say "much harm" in it, I mean to say I do not think I would be doing any wrong to the landlord.

11750. Are you aware that your own valuer, Mr. Heard, told us, that when he found any reclamation upon the map in 1848, he never gave it to the tenant?—I do not follow you.

11751. He takes with him on to the farm, the ordnance map of 1848?—Yes.

11752. If he finds on that map a reclamation then done on the farm, he gives the whole value to the landlord?—What I have understood from him about that is this: the Ordnance Survey in Cork, I think, was in 1842, and if he finds that the improvement was done in 1842, if he arrives at that conclusion, he then comes to the conclusion that that was done in 1842.

11753. Why should that be done?—Because if an improvement is made in 1842, you see it on the map of 1842; there it is.

11754. There it is; and why should he presume that the tenant did not make it?—If you take the period of enjoyment, and apply the value to that period of enjoyment, if it were worth anything, they would have paid themselves since 1842.

11755. In the period of enjoyment since, you mean?—Yes.

11756. That is presuming in every case, no matter what the improvement was, or how much it added to the letting value of the soil, that the enjoyment since the improvement was made will have compensated the tenant for making it?—Drainage, as I have heard very competent men say.

11757. Reclamation we are on?—Reclamation drainage is one species.

11758. It is part of it?—It has never been raised before me at all. I have never heard anyone dispute or quarrel with Mr. Heard's report to me; they have never done it.

11759. At any rate you say that, looking to the fact that the tenant does make improvements, and to the difficulty of proof, you would see no hardship in a general rule that the improvements causing the value should be presumed to be his unless the landlord proved the contrary?—I do not see any reason why it should not be so.

11760. I think you were one of the Committee of County Court Judges who drew up this form that has been used by the valuers?—There have

Mr. *Sexton*—continued.

been so many; but if you will allow me to see it I will tell you.

11761. Your name is to it, "J. C. Neligan." The principle is that you fix a rent per acre?—We fix a rent per acre?

11762. Yes?—We do.

11763. I do not think you need go further?—The rent is not an acreable rent. Practically speaking, what I wish is to have each acre on the farm valued as well as I can; then to tot it up for the purpose of arriving at a general result. You would scarcely perhaps call that an acreable rent. It depends entirely upon what a man means by an acreable rent. To that extent it is an acreable rent.

11764. You distinguish between gross and net value?—Yes.

11765. You could not put a figure upon it?—I could not.

11766. You could not calculate that?—Not as a rule; you could not take an average.

11767. That, of course, gives you, I apprehend, the gross value of the farm?—I take it so. Remember that the *value* is a matter the Legislature has not put upon me, except as sitting as a juror between different valuers.

11768. But you do sit as a juror?—Yes, as between different valuers.

11769. And do you determine it?—Yes, as a juror.

11770. Now, will you tell me, following out your scheme in *this* form; valuing per acre; having regard to the total value, how it is possible on a tillage farm to exclude the value of buildings?—Suppose I go to *this* table (*referring to the table at which the Witness sat*), and I find that *there* is a building, and I go and value the acres of the farm; I do not value *that* bit.

11771. How do you value the rent per acre of the produce?—According to acreage measure?

11772. Yes?—This table I take for the sake of illustration, as a farm; *here* are the buildings on it; the buildings are made by the tenant; in point of fact, for those he is charged no rent, practically speaking.

11773. That is just the point in dispute. To remove doubt, can you see any objection to drafting a new form in which you would value the building and the land together as a going concern?—I do not think in county Cork my valuers act much upon this form now. The Land Commission never furnished us with this form even; the valuers have what are called the pink forms sent to them by the Land Commission, and the report to me is upon the Land Commission form.

11774. It is not the form used by the Sub-Commissioners?—I could not tell you whether our form is the same as that of the Sub-Commissioners.

11775. I can tell you it is not, nor anything like it?—We use a form sent down by the Commissioners for our valuers. They have superseded ours, and they have sent down a form for our valuers.

11776. Why should not you value the whole farm as a going concern; if the tenant has buildings, take off the value of them, and if the landlord has them, let the matter stand?—

Because

Mr. *Sexton*—continued.

Because I think the other gives me a better idea.

11777. The impression it gives me is that the landlord gets rent twice; the tenant is always rented upon them?—That is how different men look upon different matters. It does not strike me in that way.

11778. Would it not be important to get rid of suspicion?—But I do not see any suspicion myself.

11779. There is suspicion abroad upon the subject?—There may be.

11780. Is it not desirable that justice should be above suspicion?—If I were to alter the pratice of my Court to meet every case of fancy suspicion that arises amongst a very suspicious people, I think I should find myself very busy.

11781. Do not you think the tenant farmers of Ireland in all the circumstances are entitled to regard the administration of justice with a somewhat critical eye?—If they look upon me with suspicion I think their suspicion is ill-founded.

11782. You think a rent per acre, measured by the value of produce, can be safely applied to the valuation of the land of a farm, and will not include any part of the buildings?—The mode of valuing, and the process of valuing, the Legislature has removed from me and vested in others. I am very subservient to the law.

11783. You make no suggestion for the amendment of it?—Except that it requires no amendment.

11784. You wish to encourage the tenants. What is your practice in regard to the letting value of improvements, or, rather, what instructions have you given to your valuer in disposing of the letting value of improvements?—I do not follow your question.

11785. What instructions have you given to your valuers as to how they are to act in disposing of the letting value of improvements?—I have given them no instructions upon the question of value, because I have no right to instruct them.

11786. No right to instruct them?—No, the law does not give me that power.

11787. You say that, after giving the tenant an allowance for his outlay, you would give him three-fourths also of the rent?—Remember, I took that as a guess figure; I certainly give him a large proportion of the rent.

11788. You do?—Yes.

11789. Now, I want to know how you do it?—In calculating the rent.

11790. Each valuer in his report gives the capital value of the improvement; the outlay?—An improvement is no improvement until you see that it adds to the annual letting value of the land. You then have to find out how much it adds to the annual letting value.

11791. Where does he put that; does that appear on the report?—The report sent down to him by the Commissioners falls short of that; but in the report he makes up for me, and which he puts before me, and which I copy in my own book, that occurs where I have to deal with the question of improvement.

11792. Does he put into his book the letting value added by reason of the improvement?—I cannot tell you whether there is a formula that he appeals to in every case, because I have not got his books before me; but I tell you that is the result when I have to deal with improvements.

11793. Unless you know what is the letting value due to the improvement, how can you take it into account?—I get at that value; but whether every report of his follows a particular form or not is another matter. I say there is no such form. If I want to get it I must find from him (and I do find from him) the increased letting value of the farm in consequence of such a transaction. Then, as I understand the law, that increased annual value of the farm I have to divide between the parties according to their respective interests. The larger interest is that of the tenant; and the proportion of the interests, I think, must vary very much according to individual cases. As I have said before, in many cases of these improvements you have not only to look at the work done and the present annual increase, but you must look at the character of the work and see the workmanlike manner in which it is turned out.

11794. When you find that there is letting value after the outlay is repaid, do you usually give the greater part of it to the tenant?—Oh, yes.

11795. You do?—Yes.

11796. You think his interest is greater than that of the landlord?—I do. What occurs to me is this: We will take it for the sake of argument that farm is increased 10*l.* a year. Very well; I have to distribute that 10*l.* a year. I believe the occupier of that farm has fixity of tenure; he has, and having regard to what has gone before, it would be unfair to divide that half and-half between them; I ought to give the tenant more than I do the landlord. Then as to the proportion in which I would divide that, I am very much influenced by the character of the work, the mode in which it is done, and the character of the tenant himself.

11797. Judge Bewley told us that after the allowance for outlay has been made to the tenant, there is no further distribution of the balance of the letting value as such, because he said the tenant has interest in the whole holding, improved and unimproved, called an "occupation right," and that right is considered as a whole in fixing the rent?—Then if he is right, I suppose I am wrong.

11798. At any rate, your practice is to take the letting value of the improvement by itself; first to give a part of it to pay back the outlay?—Yes.

11799. Then divide the remainder between two according to the proportion of their interests?—According to their respective interests; and if I have a doubt at all I give the benefit of that doubt to the occupier, the man who did the work.

11800. Judge Bewley, sitting at the head of his Court, is entitled to lay down the law for you, is he not?—He is, to be sure; but I will not take his law from his answers here; I will wait until he decides that in Court. Let him first hear it argued and decide it as a judge, and then I will follow it.

11801. If

Mr. *Sexton*—continued.

11801. If he decides the case as a judge sitting in Dublin, you will take it from him?—I am bound to. As I have told you before, I am a great respecter of authority.

11802. Just a question or two about this occupation right. We have the amazing evidence tendered to us here, that after 13 years of these Acts, the question of the occupation right of the tenant in measuring rent has never been raised?—I have been sitting administering this Act since it passed, and I have never heard it, and I have had before me men of great energy and great ability, and it never occurred to any one, either barrister or solicitor, to raise the point. If it were raised to-morrow, what I would do is this: I would set it down to be argued, and I would not undertake to decide it without hearing it argued. I would have the case argued *pro* and *con*, and I would then consider it and rule to the best of my ability. I can do no more.

11803. I submit to you that in fixing a rent per acre as you do with regard to the value of produce, you must necessarily fix that rent without relation to any particular individual?—As I have told you before, the value is not a question for me. I do not value by produce; I take the value. The landlord's valuer says, "that is worth 10*s.* an acre." Mr. Heard says, "that is worth 10*s.* 6*d.* an acre," and the tenant's valuer says, "that is worth 5*s.* an acre." I interrogate each of them as I best can as to the mode upon which he arrived at his conclusion; and then, as I have told you before, I look upon myself as a juror, a juror hearing a case, where expert witnesses are examined, and I find the best verdict I can.

11804. If you fix a rent per acre with regard to the value of the produce, what is the effect on your form?—What form?

11805. The forms used by the valuers?—I am not aware that that is in the form.

11806. You specify the different kinds of grass and put values on them?—It does not say in any particular form; it takes me by surprise to hear it.

11807. What takes you by surprise?—To hear that the form has to give it, because that is not the form I have been seeing.

11808. The form, we have been told here, distinguishes between grass of different sorts, and sets a value upon each of them?—That is, the character of the land; some lands are better than others.

11809. And there is a calculation of the land per acre?—I do not see how else you can value the land.

11810. To whom is it valued, to the tenant coming in?—No.

11811. Let me give you what the County Court judge of Kerry says. He answers every-one of the questions the other way, except one or two?—I will answer for myself.

11812. Question 9015: "I understood that the rent was the rent which would be paid by an incoming tenant, a solvent tenant; incoming, not an occupying tenant, but another, a tenant from year to year?" The answer is "Yes." Then the next question is: "Then you deduct from that an allowance for the improvements made by the existing tenant. From that I would infer that the interest of the tenant, as distinguished from

Mr. *Sexton*—continued.

that of any other person, is measured simply by his interest in his improvements?" "Yes" (the judge says), "that is to say, he pays rent for everything that is there except the improvements he himself has made. (*Q.*) And such rent as any solvent person would be willing to pay?—(*A.*) Yes." Now, is that your practice or is it not?—It is not; because if, as a landlord to-morrow I have an unoccupied farm, and I set that up in the market and say, "The farm of Blackacre is to be let," and I will get what I understand has been called "competition rent" for that, that is not the rent which I deal with when I am valuing and trying to fix a fair rent.

11813. I think you may put that out of view. It is not suggested by anyone that the competition rent, the highest rent which the man could get by throwing the farm into the open market, is what he would get at all; but I put this to you: The statute first directs to fix a fair rent. Now is that fair rent that you fix the rent that a solvent tenant coming into the farm would be willing to pay?—It is the rent which the occupying tenant, assuming him to be an improving tenant, and assuming him to be a solvent tenant, ought to pay, leaving him a fair margin as the outcome of the matter.

11814. How do you distinguish between him and any other solvent man who wishes to come in?—I do not bother my head about other men; I only deal with the man before me.

11815. Then it is the rent he would be willing to pay from year to year, whether he was the sitting tenant or not?— I do not deal with any other man than the man before me.

11816. In fixing a rent for him you fix a rent which another reasonable and solvent man coming in would be willing to pay?—If two and two are equal to four, three and one are also equal to four; it is the same result?—I declare I do not follow you.

11817. You do not follow me?—No; at least I cannot see the point you want to arrive at.

11818. The tenant in occupation of the farm has legal rights, one of them being to remain there perpetually?—Yes.

11819. What do you do in fixing the rent?—I have regard to the fact that he is a tenant in occupation and with rights.

11820. And the County Court judge of Kerry has not and the legal Sub-Commissioners have not?—I am not the County Court judge of Kerry. I am telling you what I do. I may be wrong, and you may find fault with me; but I am telling you I do; I may be following a wrong rule, but I believe I have been doing the best I could for the tenants in that.

11821. Under these circumstances, then, if you fix a fair rent, having special regard to the fact of the tenant being there, what do you understand by the tenants' interest?—When the law says we are to have regard to the tenants' interest, I take it to mean that he is not a man who has to come in and look about him and bid for a house to shelter him or some place to invest his capital in, but that there he is, a man in occupation, and with certain rights conferred on him by the law.

11822. Do you consider at all what a solvent tenant coming in would give, and do you deduct

Mr. *Sexton*—continued.

from that anything for the occupation right of the sitting tenant?—I do not.

11823. You do not?—I do not.

11824. So that, for all you know, or think, the rent you fix would be the same rent that a solvent tenant coming in would have to pay?—I have heard the tenant here called "sitting." I do not believe the rent which I fix for the sitting tenant is a rent that the landlord would be satisfied with from an incoming man; at all events, those are matters which I do not go into myself; I merely try to do what is fair between landlord and tenant, having regard to the law that I am administering.

11825. Do you take into account or measure in your mind in any part of your process, the value of the occupation right of the tenant as a factor in determining the rent?—No, and I have never been asked to do it. As I say, that is quite a new point, and has never occurred. As I tell you, I have been administering this Act since it passed, and in a great number of cases it has been argued before me by very acute men, and they have never asked me to do it; and as I said before, if I were to do it, I think it would involve other considerations that do not now arise.

11826. If the Legislature meant by the Act of 1881 that the interest of the tenant involved a deduction from the fair rent that anyone else might pay, that has not been carried out?—I will not answer a supposititious case. If the Legislature meant something else than what I understood them to say, I have not carried it out.

11827. At any rate, you have not measured the occupation right in fixing the rent?—No.

Mr. *M'Cartan.*

11828. I do not understand exactly what you mean by "presumption." In case the tenant, when he came into Court, did not himself see the improvements made, would not you require some proof that they had been made by the tenant?—I have been using the word "presumption" up to this under a different impression. I understood it to be used to me in its legal acceptation; and I have been so dealing with it, because we have in law what we call the doctrine of presumption; certain cases are to be presumed in the absence of evidence, and I have been entirely applying my answers to that meaning of the word, as to whether certain facts are to be assumed in the absence of evidence one way or the other.

11829. That is exactly what I mean. When a tenant applies to have a fair rent fixed, do you presume that the improvements scheduled on the back of his notice belong to him without any proof?—No; what occurs in these cases is this: The valuer goes down, but as the improvements from time to time arise he must make inquiry in order to value them. He then gets the tenant to show them; he looks into them, and either the tenant is able to tell him that he did them himself, or that his father did them. The valuer knows enough now to know that the break between father and son, or from vendor to purchaser, will not deprive a man of his right to improvements, and as a general rule when the man says he did them, the valuer acts upon that saying, and for this reason: the landlord, by the originating notice served upon him, is informed that the tenant claims them, and if he does not come in and contest that, I infer that they are done by the tenant.

Mr. *M'Cartan*—continued.

11830. Is it not the practice when the tenant comes into Court that he has to confirm the statements made on the farm by legal evidence?—He comes in and gives me such evidence as satisfies me reasonably that he did them.

11831. I will take a case that has been a very frequent case here. In the case of a tenant purchasing who was not able to prove himself that the improvements were made by his predecessor, and could get no person to prove that he saw them being made; in that case would you say you would presume that they belonged to the tenant?—That case has not come before me.

11832. Suppose it does?—When it come before me I will decide it.

11833. You might answer now. I understood that you came over here to help us in our Inquiry?—I did; but not to embarrass myself in my judicial functions.

11834. What I understand, then, is that the answer to that question might embarrass you in your judicial functions?—Certainly it might in my judicial functions; because I should probably have, some day, some astute gentleman getting up and saying, "At Question 45700, before the Committee on the Land Acts, you said so-and-so."

11835. With reference to the evidence of Mr. Heard, I understood that, as a general rule, the value he puts upon the farm, becomes the fair rent?—Very near it. I have found Mr. Heard very accurate, and, as I think I said before, perhaps, you would be astonished if you knew in how many cases people on each side acquiesce in his valuation. Very frequently now, even in large cases, where the landlord's valuer says 48*l.*, and Mr. Heard says 50*l.* or 52*l.*, or *vice versâ*, I call attention to the fact, and they accept Mr. Heard's valuation.

11836. He merely gives this written report to you, and is not sworn in any way over it?—No; he is not sworn.

11837. I believes he acts in the same county as a professional valuer before Sub-Commission Courts?—I am not aware of it.

11838. He stated so in his evidence here?—I do not know anything about it.

11839. He also stated, you will not be surprised to hear, that the valuation he gave there was not often accepted as the fair rent; it was generally fixed lower?—The Commissioners may not know him as well as I do, and, therefore, may not attach the same weight to his evidence.

11840. They get his sworn evidence, and you get his single statement?—I believe of that gentleman that his word is as good as his oath.

Mr. *T. M. Healy.*

11841. Is there any way of making a motion in the County Court?—A motion before me?

11842. Yes?—Yes, I have heard motions.

11843. In

Mr. *T. M. Healy*—continued.

11843. In what class of proceedings?—I have heard motions for an adjournment. I remember two or three, where the tenant's solicitor has said to me: "We have been disappointed in our valuer."

Mr. *T. M. Healy*—continued.

11844. Have you heard any motions under the 13th section of the Act of 1881?—What is that section? I do not remember them by heart.

11845. Off-hand you would not say that you could remember what that section is?—No.

Monday 30*th July* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. Leese.
Mr. Dillon.	Mr. Macartney.
Mr. Hayes Fisher.	Mr. John Morley.
Mr. Fuller.	Mr. T. W. Russell.
Mr. T. M. Healy.	Mr. Sexton.
Mr. W. Kenny.	Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY, IN THE CHAIR.

Chairman.

REFERRING to the correspondence between Mr. Bailey and Lord Justice FitzGibbon, which I laid before the Committee on Friday last, I may state that I have received another letter from Lord Justice FitzGibbon which will end the matter. The Lord Justice writes to Mr. Bailey:—

"Dublin, 10, Merrion-square,
"27 July 1894.

"My Dear Bailey,

"Your answer to my letter of this day week reached me yesterday. I thank you for ending the apprehension of any interruption of the good feeling which exists between us. But before you think me unjust or unfair, I ask you to remember the purpose for which my first letter was written, and the circumstances under which it obtained publicity. Even those cannot be fully understood without knowing the intimacy of my friendship with Judge Bewley.

"You must not ask me to discuss the differences between your evidence and mine. My answer to the details you mention could lead only to a technical argument: to go further would open a controversy as to questions you answered, the general effect of your evidence, and the comments upon it, which would go far beyond the consideration of particular cases. We were both official witnesses, not volunteers, called for a public purpose to speak of difficult subjects, and the Committee alone can judge of the information which we gave, or can permit it to be supplemented or discussed.

"You were drawn into a discussion of the decisions of the Court of Appeal, and your evidence seems to have led to my attendance being required. The newspaper report, with its

Chairman—continued.

comments, was sent to me when I was summoned, and I had then no other means of judging of the effect which had been produced. I endeavoured to make my statement of the law and action of my Court clear and complete in itself, so as to correct any previous misunderstanding, without any pointed reference to you. My evidence was followed by the comments of which Judge Bewley complained, which were based upon a supposed defiance of the law as stated by me, said to be involved in the procedure of the Land Commission as explained by you. This adverse criticism did not appear to me to apply to the procedure described by subsequent witnesses, who, so far as I saw their evidence, did not give the same effect to the decision of the Appeal Court in Adams *v.* Dunseath. I answered Judge Bewley's question for the sole purpose of satisfying my friend's own mind as to his understanding of my meaning.

"I say so much to show you that, if I answered Judge Bewley at all, a reference to your evidence was not only relevant but necessary. To say any more could only lead to further mischief, and might even involve other interests, which as public officials both you and I are bound to regard.

"Surely the last word about this incident, which has so unwittingly brought pain upon us both, ought to be the whole-hearted assurance, which I frankly offer for your acceptance, that from beginning to end my full confidence in your integrity and ability was never for a moment shaken, or even in question.

"Believe me, &c.
"*Gerald FitzGibbon.*

"W. F. Bailey, Esq."

Mr. TOLER R. GARVEY, called in; and Examined.

Mr. *Macartney.*

11846. I BELIEVE you have been a practical farmer and land agent all your life?—Yes.

11847. In what counties are you interested?—

Mr. *Macartney*—continued.

I live in the King's County, and my experience extends over that county, Queen's County, and Tipperary chiefly.

11848. Wil

Mr. *Macartney*—continued.

11848. Will you tell the Committee the extent of the farm which you have in your own hands?—At present I only farm my own small demesne of about 200 acres; I rent a farm adjoining of about 50 acres; but I superintend for the proprietors for whom I act about 1,500 acres.

11849. Does your knowledge extend both to grazing and to tillage?—Yes. On those farms I chiefly buy and sell the cattle myself.

11850. I believe you act as an inspector for the Royal Dublin Society?—I am at present acting as a judge of the farms competing for prizes offered by the Royal Dublin Society.

11851. And you fulfil certain other functions with regard to experimental farms?—Yes, experimental farms in the County Mayo, near Swineford. I acted as inspector of those farms ("example holdings" they are called) for two years for the Royal Dublin Society.

11852. You have to go very closely into the detail of the work carried out upon those farms?—Yes.

11853. And you are acquainted with such balance-sheets as are kept?—Yes; on the experimental farms the only accounts are kept by the Royal Dublin Society; the tenants themselves do not keep any accounts. On the other holdings for the Royal Dublin Society, those who are competing for prizes, generally keep accounts.

11854. If there are any documents you can hand in you might briefly tell the Committee the purport of what you have gathered from your experience on those farms; but if you cannot hand in any documents do not say anything about it?—I could not possibly hand in any documents connected with the Royal Dublin Society, for I have not got them with me; in fact, I was on my tour of inspection when I was asked to come over here, and I have not been home since. I have not got any documents.

11855. Could you hand in any documents afterwards to supplement your evidence?—Not unless they were to be treated as perfectly confidential, because I do not think it would be fair, without the permission of the tenants themselves, to hand them in; I could not promise any documents from those gentlemen.

11856. Your duties in connection with these prize farms and experimental farms have given you a good deal of experience outside the immediate neighbourhood in which you live, and the properties which you manage?—Yes, I think they have given me some information.

11857. What does your experience lead you to say with regard to the profitable or unprofitable nature of Irish farming in the last few years?—My experience is that on large farms, or mixed farms, where a man has a heavy labour bill to pay, he can make the farm profitable by close attention to the business, and if he possesses the necessary knowledge. In small farms I consider that at the present time (such farms as come within the range of my experience) farming is a profitable business.

11858. With regard to the fall in prices (some evidence has been given before the Committee about it), is it not the case that there has been, since 1879, a great fluctuation, both up and down, of prices of stock in Ireland?—Yes.

11859. What I mean is this, it has not been a continuous fall?—No, it has not been a continuous fall, since 1879, I think you said?

11860. Yes, since 1879?—That is so.

11861. What effect, in your opinion, has this had upon farmers in your neighbourhood?—The farmers that I am acquainted with certainly have not been able to make money at the same easy rate since 1879 that they did before that year.

11862. Have they attempted in any way to meet the alteration in prices by improved methods?—Yes, I think they have very much, especially within the last two or three years.

11863. Has this fluctuation in prices affected all the elements of produce on an Irish farm?—No; there has been a change of prices, but there has not been a constant fall in all the products of a farm.

11864. So that although the farm might be very much affected by depreciation in "store stock," there might be other elements in the produce of the farm which might compensate?—Certainly.

11865. Can you indicate to the Committee any of the articles which form a part of the principal produce in your neighbourhood?—The principal articles are, barley, oats, pigs (or pork), and store stock, and to a certain extent beef and mutton.

11866. Is barley an important crop in your neighbourhood?—Very important, it is the most important cereal.

11867. Is it a remunerative one?—Yes, it is.

11868. Could you give the Committee any idea of the relative importance of the barley crop in King's County to the total produce on a farm (on an average), say, of 20 acres?—Well, on a 20-acre farm (which is what, perhaps, might be taken as the average size of King's County farms, and many Tipperary farms) the system generally pursued is that about half of that farm would be under tillage, and they observe, as a rule, a four-course rotation. Well, according to my experience, the produce of two and a-half acres of barley would pay the year's rent of the farm.

11869. What do you estimate the rent of the farm at there?—I put the rent of the farm at a pound an acre, 20*l.* a-year, which is about the letting value. I am speaking of Irish acres; per Irish acre, it would be about a pound an acre.

11870. I believe that is about 12*s.* an acre, statute measure, is it not?—Yes.

11871. That would leave the produce of the remaining acreage very nearly free of rent?—Practically free of rent.

11872. Has the price of store cattle, in your opinion, been affected by other matters than foreign competition, or the fluctuations in this country in the market?—Yes, I think so. There has been a marked difference in the price of store stock between good, well-bred animals and inferior stock, and the inferior stock have been selling at a much lower price in proportion; I might say that the quality of store stock (which has been observed by a great many buyers who come to our neighbourhood for the purchase

Mr. *Macartney*—continued.

purchase of "stores") has greatly declined of late years.

11873. To what do you attribute that?—A great many of the large proprietors (farmers) used to keep very good bulls, and they gave up keeping those, tenants did not use them nor seek them, and they gave up using those; and some local farming societies fell out of existence, became extinct, and others reduced their operations very considerably.

11874. Do you think the stock breeders are beginning to recognise the evil effect of this now?—Yes.

11875. Rearers of stock?—Yes, and are taking advantage of every opportunity they can of remedying it.

11876. I want to ask you a question or two about the work of the Sub-Commissions: Do you yourself take any part in valuing the holdings that come before the Sub-Commission on the estates with which you are connected?—Yes, I do. I generally value the holdings if I have time to do so. If there are not too many together to be heard, I generally value them myself. I give evidence of the valuation, and I accompany the Sub-Commissioners on to the land when they make their inspections.

11877. In making your own valuation, do you allow for what I may call the occupation interest of the tenant; do you treat him as having an interest in the land over and above his improvements?—I do.

11878. What is your opinion as to the practice of the Sub-Commission before whom you have appeared upon this point?—Of course I can only infer, because they do not tell me what they do; but I think the inference is very clear that they do the same thing, because they always asked (they have frequently asked myself, and I have heard them ask valuers repeatedly): "Are you valuing this holding as a holding in the hands of the tenant, or as if it was in the hands of the landlord?"

11879. And I suppose that a comparison between your valuations and the rent eventually fixed by the Sub-Commission would confirm you in your opinion?—Yes, it does.

11880. What are the principal improvements which the tenants claim for?—Buildings. All the buildings on the farms they generally claim; and that is generally undisputed.

11881. Undisputed, the buildings?—Generally speaking, the buildings are undisputed. Then they claim for a variety of other things, chiefly the making of drains and reclamation.

11882. And fencing?—Fencing too, yes, a very considerable amount is claimed for fencing.

11883. On the estates with the management of which you are connected, has it been the practice to contribute anything towards the tenants' improvements?—Previous to the passing of the Land Act it was.

Mr. *T. W. Russell.*

11884. The Land Act of 1881, do you mean?—The Land Act of 1881.

Mr. *T. M. Healy.*

11885. Have you any estate books here to show that?—No, none whatever.

Mr. *T. M. Healy*—continued.

11886. Will you give us the names of the landlords who were in the habit of giving money for these improvements?—Yes, I will, with pleasure.

Mr. *Macartney.*

11887. Will you state some of the estates?—The late Lord Bloomfield's estate is one. That was an estate of between 3,000*l.* and 4,000*l.* a year (one portion of it), and the practice was to set aside a sum of 300*l.* a year for contributing to improvements on the estate.

Mr. *T. M. Healy.*

11888. On Lord Bloomfield's estate?—The late Lord Bloomfield.

11889. In what county?—In County Tipperary.

Mr. *Fuller.*

11890. Would you specify the nature of the improvements that the money was spent upon?—Yes; the larger part of the money was contributed towards timber and slates for dwellings and out-offices and buildings on the farm; but also a considerable portion of it went towards draining.

Mr. *T. M. Healy.*

11891. Is he still in possession of the estate?—No, his sister is; the Honourable Mrs. Kingscote.

Mr. *Fuller.*

11892. Is none of that money spent upon the demesne?—None whatever; the demesne is a very small one, and he used not to reside on it.

Mr. *Sexton.*

11893. Did the allowance cease to be given after 1881?—Yes.

11894. Would the estate books show this expenditure?—Yes; I may say that in every case of a fair rent being fixed before the Courts we claimed the contribution.

Mr. *T. W. Russell.*

11895. Quite so; and it was allowed?—And it was allowed.

11896. Therefore no harm befell the landlord by the Land Court?—Not the least.

Mr. *T. M. Healy.*

11897. You did not tell the Bessborough Commission anything about this in 1880, did you?—If I was asked I did.

Mr. *Sexton.*

11898. You have only given one case; can you give any others?—The Earl of Rosse's estate is another one on which there were contributions. There was no special sum allocated there for improvements; but generally when a tenant wanted to make an improvement, he used to come and say: "I want to slate this house, will you assist me"; and it was very frequently done, not as a general rule, but it was frequently done.

Mr. *Fuller.*

11899. Was not additional rent put upon the money

Mr. *Fuller*—continued.

money that was given in that way?—No, not any, unless the landlord contributed (as he did in some few instances) the whole of the drainage. Money was advanced, or given to a tenant, or a piece of drainage was effected for the tenant, and in that case there would be an interest charged upon the money expended by the landlord.

11900. What interest did he charge?—Five per cent.; but where the tenant performed any part of the work there was no additional rent put on; it was simply a contribution.

Mr. *Macartney.*

11901. Do you think that the tenants have experienced much difficulty in giving evidence of their improvements in Court?—No, not the least, I think.

11902. It has been stated here, by certainly one witness, that there was a reluctance on the part of other tenants on the same estate to come forward to support the claim; is that your experience?—I have never seen it; I have frequently seen other tenants brought up to prove things that perhaps a young tenant had not seen done.

11903. What is the character of the reclamation which you have heard claimed for?—Well, it varies a good deal, it sometimes consists of taking out bushes; stubbing out thorn bushes, removing large stones and boulders, reclaiming cut-out bog, and draining wet lands.

11904. Do you think that reclamation is all of equal value?—Oh no, I think not; I think it varies very much. Sometimes it is remunerative and pays well; and at other times it is not very judiciously carried out, and not much good results from the expenditure.

11905. I suppose that it would be quite possible for a tenant to claim for improvements, such as fencing or the levelling of fences, which might suit him, and might not possibly suit a succeeding tenant or a purchaser?—Yes, that would be so; I have known tenants claim improvements for levelling fences, where the levelling of them has been of very great gain to themselves.

11906. Now, we have had a distinction drawn before the Committee, which has also been drawn in the celebrated case of Adams *v.* Dunseath in the Court of Appeal, between the outlay of the tenant on improvement works, and the increased letting value which may result from those works. When you value a tenant's improvements, do you endeavour to give him a full percentage on the outlay on those improvements?—Yes. I generally try and estimate the cost of what the improvement is and allow a percentage upon that. This applies to the reclamation of land and the drainage of wet lands more than anything else; those are the chief things I have experience of; if there is a good result from the drainage, my practice is to divide the difference between the landlord and the tenant.

11907. Excluding the question of the drainage of wet lands, is it your experience that when you have given a percentage on the improvements there is much left over to be considered as increased letting value?—That altogether depends upon the quality of the land that you are dealing with; some land is very improvable

Mr. *Macartney*—continued.

and some is not. With very improvable land, such for instance as land that has been flooded or covered with water and that has underneath it any amount of clay deposit, that is very valuable land and the result of that generally is a very large increase on the outlay; a very large increase in the value of the land. Then again, there are other descriptions of land, such as cut-out bog. I am speaking of the class of bogs I am acquainted with, where the turf has all been cut away, cut down to the gravel, and that is a class of land that it is expensive to reclaim, and generally the cost of reclaiming that land is considerable, and the return is not great; it is not much more, if any more, than the proper percentage upon the outlay.

11908. Have you come across instances of deterioration of the land by either a wasteful system of cropping or an improper system of continuous meadowing?—Meadowing, yes, I have. Not a great deal of deterioration from bad tillage, but I do know instances, and many instances, of deterioration of land from over-meadowing, especially low-lying land, callow lands, lands that have been drained, lands that have been the subject of arterial drainage by a drainage district or by a drainage board, and the result has been very satisfactory for a few years; but by perpetual mowing and no top dressing (perpetual mowing of the hay, carrying it away, eating off the after grass, and no application of anything else in the shape of top dressing), these lands become deteriorated, and although subject to a very heavy drainage charge they very often are so worn out that they are not very much better than they were before the drainage took place at all.

11909. Do you think that the Sub-Commissioners have considered that sufficiently in the cases where these particular things have been done?—Well, the Sub-Commissioners value the land just as they see it, and in many instances where a heavy drainage charge exists, which the landowner has to pay and which he has apportioned on the tenants, the rents have been reduced to considerably below what was the rent before the drainage charge was added at all.

Mr. *Sexton.*

11910. But the drainage charge is still a part of the rent?—No, the drainage charge merges in the fair rent altogether so far as that tenant is concerned.

11911. The Sub-Commissioners measure the fair rent, including the drainage charge?—Well, that is always put before them, but they tell you over and over again they cannot take that into account; they can only value the land as they see it. I have had a great deal to do with drainage districts; I think I was the honorary secretary of seven drainage boards that were formed in my neighbourhood.

Mr. *W. Kenny.*

11912. Is the drainage charge, after a fair rent is fixed, paid by the landlord?—If it has not been paid off it is paid by the landlord. Of course, if it has not been paid off, the landlord is liable for it; his whole property is liable for it; not only the part affected by the drainage, but the whole estate.

Mr. *W. Kenny*—continued.

11913. And the tenant for the future is exempt?—The tenant for the future is absolutely exempt.

Mr. *Macartney.*

11914. On the question of town parks; have you had any experience in connection with them?—Yes, I have; on Lord Rosse's estate; the town of Parsonstown is on his estate ("Birr," it is commonly called); and I have had some experience with regard to town parks there.

Mr. *T. W. Russell.*

11915. What is the population of Birr?—Five thousand; that is, 5,000 without the military station; not including the military station or the adjoining village.

Mr. *Macartney.*

11916. Do you think it would be desirable to make any alteration in the law as it now exists?—I think it would be a very great hardship on both the owners of properties and the inhabitants of a town if town parks were converted into agricultural holdings.

11917. I believe at one time Lord Rosse had no control over the land?—When my father became agent to Lord Rosse (I was in the office as a lad at the time) there were complaints made to my father by the householders of the town that they could not get a field; they could not get a town park.

Mr. *T. M. Healy.*

11918. What is the year you are referring to?—My father was appointed agent in 1853.

11919. That is, before the passing of the Acts of 1860, 1870, and 1881, when there was the absolute right to evict, that complaint was made to you then?—Yes, certainly. The complaint was made that a few people had bought up and had got the larger portion of the land round about the town, and that they were either farming it themselves, or sub-letting it; they made a considerable grievance of this, and asked that some arrangement might be made by which they could be possessed of a field. There was a list immediately made out. My father promised that as he could get land on hand they should be accommodated, and a list was made out. There were immediately 30 names put down as the names of those who were in pressing need of this accommodation, and they were supplied, as opportunity offered, in turn, off this list. There is still some want of accommodation.

Mr. *Macartney.*

11920. On the question of sub-letting, do you think it would be advisable to open the Act to sub-letting of every character, or not?—No, I do not think it would.

11921. Have you any suggestions to make to the Committee on the question of mill holdings? Do you think that the exclusion, as it now exists under the Act of 1881, ought to be kept up where the mills have run out of use?—The only difficulty that I see about that is that it is rather a pity to put any difficulty in the way of acquiring mill sites for drainage purposes; and if they were made the subject of agricultural holdings and brought within the Land Acts that would be adding considerably to the difficulty.

Mr. *Macartney*—continued.

11922. Would you be in favour of leaving it to the discretion of the Sub-Commission?—Yes. Keeping that point in view.

11923. Have you had any experience of agreements formed out of Court?—Yes; I have.

11924. Where agreements have been formed on the estates which you manage, how have they been arrived at?—They have been arrived at by a settlement between myself and the tenants at the request of the tenant.

11925. At the request of the tenant?—Yes.

11926. Have you gone on arriving at these agreements from year to year?—No; for some considerable time I have given up any settlements out of Court; I prefer they should all be done in Court.

11927. Do you think, with regard to agreements that have been arrived at between you and the tenants, that the difference between the rental under the agreement and the judicial rental is practically very small?—Yes.

Mr. *Sexton.*

11928. Is that statement supported by any document?—No; I have no documents.

Mr. *Macartney.*

11929. Could you supply the Committee when you go home with any?—Yes; I could furnish them with all the cases settled both in and out of Court.

Mr. *Sexton.*

11930. It is very desirable that we should have that?—I can furnish it when I return.

Mr. *Macartney.*

11931. What is your opinion as to the question of pre-emption; have you any opinion as to whether it ought to be retained or not?—I think it ought to be retained; most decidedly.

11932. How is it arrived at at the present moment; how do you think the Sub-Commissioners have arrived at the price?—Do you mean at the specified value?

11933. The specified value; that is what I mean?—Evidence is taken before the Sub-Commission. I have always found the Sub-Commissioners very unwilling to deal with the question of specified value, and in most cases they say that the evidence is not sufficient: but when it has been settled either by them or by the Appeal Court it has been settled on the evidence given by persons that are brought forward to show what has been the result of sales in the neighbourhood.

11934. Then the determining element, in your experience, is the price the land has gone at by auction in the neighbourhood?—Yes; that has been a main consideration, I think.

11935. Do you think it would be advisable for the Land Commission to lay down any fixed rules by which the price ought to be arrived at?—No; I think that should be left very much to the discretion of the Commissioners.

11936. You have said that you think it desirable to maintain this specified value?—Yes, decidedly.

11937. Could you give the Committee any reasons which lead you to that view. It does not operate in Ulster, and I want to know on what ground

Mr. *Macartney*—continued.

ground you think it desirable to retain it in the rest of Ireland; outside the Ulster tenant-right system?—If a landlord wants to get some land into his own hands, and is willing to pay a full price for the tenant's interest in it, I think it is reasonable that he should get it.

11938. The cases are not very numerous, are they?—No; there are very few cases, indeed, now in which the specified value is sought to be acquired or is claimed by the owners.

11939. Can you tell the Committee what is the general reason for claiming it on the part of the landlord?—Well, the general reason is that if a farm, perhaps, happens to be adjoining his demesne, he might wish to have the value fixed in order that he might take it up and farm it himself. I have known instances in which it has been claimed by the landlord at the request of the adjoining tenant on the estate.

11940. Has your attention been directed to the sales of the tenant's interest in his holding?—Those that have come within my own agency business, of course, I know all about them.

11941. Is that increasing?—I believe it is increasing; I mean the price is increasing. There have been very few changes comparatively on the estates which I have to deal with.

11942. This Committee is asked to report upon any suggestions they can obtain in regard to change of procedure. What is your opinion as to retaining appeals both on law and value, points as to value as well as legal points?—I think the right of appeal should be maintained; I think it is very desirable in every point of view.

11943. Both as regards value and as regards law?—Both as regards value and as regards legal questions; much more as regards value than as regards legal questions, for I think that the legal Sub-Commissioners are generally very competent to deal with the legal questions.

11944. We have had one or two schemes suggested to us for the next revision of rents. What is your view upon that point; have you considered the question?—My own personal view (and of course I only speak for myself) is this: I am in favour of rents being regulated in the future according to the prices of agricultural produce.

11945. At what period would you have that revision?—I would have it so that every landlord or tenant might ask for it every seven years.

Mr. *W. Kenny.*

11946. Do you mean an automatic revision?—I do.

Mr. *Macartney.*

11947. You would assume the date of the first fixture of the judicial rent as a basis?—Yes, I would take that as the starting point. If you took the year in which the fair rent was first fixed, one could of course know what the average prices were in that year, or in the seven years previous. I should prefer the seven years previous if the prices can be obtained, and I suppose they can.

11948. So that under your system, in a revision of the rent fixed in 1881, there would not only be the years that have succeeded 1881, but you would go back to the seven years preceding 1881?—Yes.

11949. Have you any other detail of your scheme you would like to lay before the Committee?—Well, I have been thinking over the matter a little, and I think a fair system could be adopted that would apply to the different districts. Of course I am not speaking of Ulster, because I have no experience whatever as regards Ulster; but in the other provinces I think there could be a very fair system devised by which rents on a sliding scale could be fixed.

Mr. *T. W. Russell.*

11950. Why do you exempt Ulster?—Because I have no experience of it; I have no connection with Ulster whatever.

11951. I suppose the prices could be applied there as well as elsewhere?—I have no doubt they could.

Colonel *Waring.*

11952. I do not understand you to say that your plan would not be applicable to Ulster; but that you cannot say whether it would or not?—Certainly not. I simply exempt it because the practices there, I believe, are different to what they are elsewhere, and I have no experience of them. But if I might go further, I would say that a Poor Law union might be the unit of area for fixing these prices, and that the principal products of the union should be taken into account, and that the products that are of most value, or what are the staple commodities of that union, should bear a certain proportion to the rent already fixed. I mean that the products should not all bear the same value; because there are some that are not at all as much brought into use in that area as others; and those that are the most used are the ones that should bear a larger proportion to the rent than the smaller ones.

Mr. *Macartney.*

11953. For instance, as an illustration with regard to cereal produce, there might be one union in which barley bore a greater proportion to the rent-making produce of a farm than oats?—Yes, as regards King's County (which I know best), I would say that if you take six products (barley, oats, beef, mutton, pork, and butter), and then divide those, say, into 12 different parts, barley might be 3-12ths, oats, perhaps, 2-12ths, beef, 1-12th, butter, 1-12th, pork, 3-12ths, and so on in that way until you make up the total amount. I think in that way you could arrive at what would be a very fair arrangement, and fix rent according to the rise or fall of prices.

11954. That would remove the existence of the question of improvements?—That would abolish that question altogether.

11955. And the tenant would get the whole advantage?—That is not the only advantage of it. In my opinion, the more the tenant could improve, and the larger the produce, the better for him; it would encourage high farming; his rent would not be affected by the large amount

Mr. *Macartney*—continued.

of produce that he could raise off the land; it would be simply a question of price.

Mr. *Sexton.*

11956. Would not the large or small amount of produce on a particular farm be a very material consideration, and would not the same Poor Law union include lands and farms of two extremes of value?—No, I think not; the amount of produce that a tenant could raise off his farm would not affect his rent at all; it is only the price of the article.

11957. Suppose there were two farms in the same Poor Law union, one a fertile farm, raising abundantly, the other a farm on the mountain-side with a very poor yield; would not the test of price, applied indifferently to those two farms, be a most misleading test?—I do not think so.

Mr. *T. W. Russell.*

11958. Do you assert that the yield has nothing to do with the question?—Yes, I say that yield has nothing to do with it, that can materially affect it.

Mr. *Macartney.*

11959. You have tested this scheme by your practical experience as a farmer?—I do not say that; I only give it as my opinion.

11960. But you believe that in all the varying circumstances of farming, it would work out fairly?—I do. I think it would work out fairly.

11961. Assuming the present system, or something approaching the present system, is to be continued, may I ask you whether you have any suggestion to make for simplifying procedure in the early steps with regard to the originating notice, for example?—I think if there is to be re-hearing there ought to be a re-hearing in Court of each case, but I would like to simplify that as much as possible. The great difficulty at present, and the great objection, is the expense of both solicitors and valuers, and if it was possible to do without those it would facilitate matters very much, but I would certainly like to retain the present system of hearing a case in Court before the Legal Sub-Commissioner and his two colleagues.

11962. Can you suggest any method by which the tenants, for instance, could serve the notice or other legal forms, which would be less expensive than employing a solicitor?—Yes; the working of the whole thing has become so familiar now to tenants, landlord's agents, and all other parties, that I do not see why the whole case should not be heard in Court by the Commissioners, and the parties interested themselves, without professional assistance; but with regard to serving the originating notices, I think it would be a good plan if these originating notices could be kept at every Petty Sessions district, and that the clerk of the Petty Sessions shall be required to fill up those notices whenever any tenant applied to him.

Mr. *T. M. Healy.*

11963. In other words, to take that out of the hands of the attorneys, you mean?—Yes, if the tenants desired it only. Of course I would not prevent any man employing his attorney if he wished to do it.

Mr. *Macartney.*

11964. A very large proportion of the cost of procedure goes in law expenses, does it not?—It does.

11965. And your opinion is that the right of both parties would be quite safe before the Sub-Commission, if they chose to appear in their own person?—I think so. I think the Legal Sub-Commissioner would take very good care that justice was done to all parties.

11966. Of course the right of appeal being retained so that in case of misadventure, it might be set right?—Yes, certainly.

Mr. *T. M. Healy.*

11967. Have you given any reductions on your own properties in recent years?—On my own properties?

11968. The properties of which you are agent?—Yes, to the tenants who have not got judicial rents.

11969. Will you kindly state the average of the reductions which you have felt it necessary to give, say since 1881?—They have varied. The reductions that are at present being given upon most of the properties with which I am concerned, vary from five to 15 per cent.

11970. Do you find it necessary to give any reductions to tenants who hold judicial tenancies?—No.

11971. And you never have done?—No, except in some very extreme cases of absolute misfortune. The rule is not to give reductions of judicial rents.

11972. Is 15 per cent. the highest reduction you have given since the Act of 1881 was passed?—No, often it has been more.

11973. How much more?—Five and twenty per cent. has been allowed in some cases. A good deal depends upon the Poor Law Valuation.

11974. Was this an all-round reduction?—No, there was a scale laid down according to the Poor Law Valuation.

11975. On each of the properties of which you are agent?—Yes, that was occasionally varied according to circumstances.

11976. Will you kindly tell us what the scale was?—Well, the scale that has been acted upon for some time has been, from below the Poor Law Valuation to the Poor Law Valuation, 5 per cent. Anybody that was 10 per cent. over the Poor Law Valuation, 10 per cent.; those that were 15 per cent. over it, 15 per cent.

11977. Did that include the cases of leaseholders?—Yes; unless they were leaseholders, who have had sub-interests; but ordinary leaseholders it did include.

11978. Then leaseholders participated in the reductions that you gave to the non-judicial tenants?—Yes.

11979. Now, would you kindly enumerate the properties on which this rule obtained?—There are not very many leaseholders upon any properties that I have to deal with, but it obtained more or less upon them all.

11980. You might give us the names, if you would?—Lord Rosse's property is one.

11981. Are there any others?—Mr. Hector Toler's property.

11982. Any

Mr. *T. M. Healy*—continued.

11982. Any others?—I do not think I have any others.

11983. Was any reduction given on Lord Bloomfield's property?—On Lord Bloomfield's property there are no leaseholders.

11984. Was the reduction given to non-judicial tenants?—Yes.

11985. Was that reduction given in consequence of the fall in prices?—The reductions began in the year 1879, the first of the bad years. Then they have been, more or less, going on ever since, to the non-judicial tenants.

11986. They were given on a scale, I understand you to say. Did your scale follow the fluctuations of prices?—No, it did not.

11987. Yet I gather that you would settle the judicial rents on a scale of prices?—If they were to be revised; on revision, I think, a scale of prices would be a fair way of revising them.

11988. I have correctly stated the substance of your evidence already given, have I not, that you would proceed to revise the judicial rents by a scale of prices?—Yes.

11989. But in your own practice, in giving abatements, if I follow you, you have not given abatements according to a scale of prices?—I really cannot speak very accurately, but I think, as well as I remember, that that last scale that I told you of was resumed or dated from the time of the fall of store stock.

11990. I do not know whether you quite apprehend my question: I want to know why you are in favour of revising the judicial rents by a scale of prices, when your own abatements did not follow or proceed upon that principle?—It is rather a difficult thing to work out. It would have taken a very considerable amount of labour to work out a scale of prices to apply to two or three thousand tenants; or 1,500 tenants.

11991. But take the year in which the Government worked it out for you by the Land Commission under the Act of 1887; they gave a Schedule of abatements from the judicial rent, as you know?—Yes.

11992. Did you, in the abatements you gave to non-judicial tenants, follow the Schedule of abatements settled by the Statutory Court?—No.

11993. You did not?—No; we rather took the Poor Law valuation as a basis, as an index, more than a scale of prices.

11994. Will you give me the date when your Poor Law valuations were made?—I think Griffiths' last valuation was made in 1852.

11995. Was that applicable to the whole of those counties; Tipperary and King's?—That I believe to be so; but I cannot speak of that as a positive fact.

11996. I gather that you now think that land is profitable if it is in the hands of tenants who pay for their own labour?—Yes.

11997. And that it is also profitable in the hands of tenants who do the labour for themselves?—Yes.

11998. That is your view?—Yes.

11999. Now, will you contrast that with the evidence you gave in 1886 before the Commission

Mr. *T. M. Healy*—continued.

of the Conservative Government of that date. First, you say that "It is not the natural desire or nature of the Irish tenants to shirk paying their fair rents." You agree, of course, in that still?—Yes, I do; it was not then, at all events.

12000. It was not then; is it now?—I am sorry to say that it is more so than it was then.

12001. Although the combination which you then so much deplored has since been dissipated to some extent?—And the fact of that has been fully realised.

12002. Then you think that now the country is really in a worse condition than it was in 1886 from the point of view of rent-paying?—No, I do not. I do not say that.

12003. Would you like to develope your answer in any way?—No.

12004. As I understand, you stated this in answer to Question 3563: "Do you think the tenants have had much difficulty in paying; on account of bad times has it been an effort?" That was a question put to you by Lord Cowper, and you said in answer: "It has been an effort to them no doubt, and it has been a much greater effort to some than others." Do you still continue to concur in that view?—I do.

12005. Then you say: "My experience is chiefly connected with tenants on mixed holdings, or farms partly in tillage and partly grazing, but perhaps rather more tillage than anything else, and no doubt there has been difficulty with many of them in paying rents"?—Yes.

12006. That difficulty now has disappeared?—Very much.

12007. In consequence of the rise in prices?—In consequence of the much better system of farming that tenants are now developing, and are beginning to practice. It is perfectly wonderful how tenants are now beginning to adapt themselves to improved methods of farming.

Mr. *T. W. Russell.*

12008. How does that tally with your answer that the quality of the stock was deteriorating, and that farming societies were going out of existence?—Perfectly, I think. I was speaking of what had happened some years ago, and that was one of the effects of the reduction in the price of store stock, and that effect has now been perceived by tenants generally, and they are endeavouring most decidedly and energetically to remedy it.

Mr. *T. M. Healy.*

12009. Your evidence is that you never gave an abatement to judicial tenants?—I did not say that; but as a rule they are not given.

12010. Now let me give you your answer to Question 3565: "Do you think judicial rents, according to prices as they now are, rents that were fixed some years ago, are too high?—(*A.*) Well, they are undoubtedly too high for some tenants in a certain way. I will just explain what I mean. I do not think they are too high for the tenants who are able to provide their own labour, and who have their own families to work. I do not think they are too high for tenants of that class; I think they are very well able to live and pay; but those who are obliged to find labour at the present rate must find very

Mr. *T. M. Healy*—continued.

great difficulty in paying their rents and to live in the same manner as they have been accustomed to live for some years past?"—Yes; well, that too, to a certain extent I think applies to the present time; but the labour question, I think, is in a better state now than it was then, inasmuch as tenants are able to use improved machinery, and do not require so much labour; they are able to farm with fewer hands than they were in those days. The amount of the new machinery that is sold in the country now is very rapidly increasing; it is quite marvellous. The English manufacturers find it a very profitable business, and in the Royal Dublin Society's shows every year there is more and more room applied for for agricultural inplements, and they are being sold all over the country to a much greater extent than they were in those days.

12011. You would not even give an advertisement to Mr. Pearce, of Wexford. Is not he making agricultural machines?—Yes, he is following up the English pattern, and making them himself; and on farms I have been inspecting recently I have seen his name on many of the implements.

12012. I suppose those were as good as the English ones?—Every bit when made in the same pattern, and rather better, I should think.

12013. You have stated that the Sub-Commissioners value the land as they find it?—Yes.

12014. I think you said that?—Yes.

12015. And that they do not take deterioration into account?—I do not think they do. I think that they take deterioration of tillage into account; if they have evidence before them of real bad farming, such as land full of dirt from over-cropping, they do take that into account, I am sure.

12016. In fact, you have a high opinion of the Sub-Commissioners?—Well, my opinion of the Sub-Commissioners is this: though I have had very grave reason to find fault with many of their decisions, I think they are fair-minded men endeavouring to act impartially, and to do their duty in an honourable and an impartial spirit. Of course, those at present acting have had a great deal of experience, and as their work goes on they profit by it, and they get more experience.

12017. There are gentlemen like Mr. Greer (who, for instance, has been in office since the Act was passed), Mr. Doyle, and Mr. Crean?—Yes.

12018. I think Mr. Rice and some others, these are gentlemen who have been in office since the Act was passed, I think?—I do not really know.

12019. They were referred to at the time they took office as "sub-confiscators," you remember that?—I do not remember hearing that. I have heard "rent-cutters" and other expressions made use of, but I do not remember "sub-confiscators."

12020. You stated that timber and slates, I think, was the extent to which you went in the contribution of the landlord?—And drainage.

12021. That, of course, would be drainage

Mr. *T. M. Healy*—continued.

where the landlord borrowed from the Board of Works?—Not always; if a small tenant was draining a couple of acres he was allowed something.

Mr. *T. W. Russell.*

12022. He was allowed 6*d.* a perch, or something like that, was he not?—Sixpence a perch will go a very short way in making a good main drain.

Mr. *T. M. Healy.*

12023. Did you know the Reverend William M'Keogh, parish priest of Ballinahinch, in the county of Tipperary?—I did.

12024. Is he living still?—I cannot tell you, I do not know.

12025. You had a copy of his evidence before you, had not you, before the Bessborough Commission?—I had.

12026. You did not reply to it?—I beg your pardon, I did.

12027. You replied as to the killing of the goats?—Yes.

12028. But did you reply to it with regard to the rises of rent, and so on?—I do not know; I do not remember exactly what I replied; but I replied, and I think it is in the Appendix.

12029. In the Appendix to the Report?—Yes.

12030. I have examined it; but I cannot find it. I find your evidence is given. You have given evidence with regard to improvements and raising of rent?—I did not say anything about raising rent, I think. I do not think I was asked anything about it.

12031. When did you take Lord Bloomfield's property over?—It has been in my father's and my own hands for 60 years.

12032. Your father was Captain Garvey?—Yes.

12033. May I ask you what date he died?—He died in 1879.

12034. Then I presume this evidence would more refer to him than to you?—Yes, I remember he was referred to.

12035. I suppose he was an old man at the time. If you were assisting him and can give us any statement as to whether this evidence is true or not I should like to know. It is said: "Upon Lord Bloomfield's property the rent is increased on the death of a tenant. If a father dies and his son comes into possession there is an increase put on. In one case that occurred in my parish on Lord Bloomfield's property, three years ago, a man named Martin Burke held 60 acres; he died, and when his widow came to pay the rent there was an increase of 25*l.* a year put on her. (*Q.*) That was on Lord Bloomfield's property?—(*A.*) Yes, he is now dead, and his sister, Mrs. Kingscote, is now the owner of the property. (*Q.*) How much was the increase?—(*A.*) £25 a year, equal to 5*s.* an acre. (*Q.*) Was that a farm on which the tenant was resident?—(*A.*) Yes. (*Q.*) It was not a grazing farm?—(*A.*) No, she is living on it; and in addition to that 25*l.* a year, there were always going with that farm five or six acres of bog which Martin Burke, during his life, reclaimed; it was a commonage

Mr. *T. M. Healy*—continued.

commonage when he got it, but after his death it was put on the same rent as the rest of the farm. (*Q.*) In addition to the 5*s.* an acre, the bog was included?—(*A.*) Yes, I would wish to explain that fully. At the time Burke was dying, he knew the rule of the property was to put an increase on his representatives, whoever would be his successor; and in order to try and protect his interest, his eldest child being over 12 years of age, he made Mr. Garvey, the agent of the property, one of his executors, thinking that, by knowing the position of his widow and children and all that, it would save them from the increase; but it did not. (*Q.*) Has that been always the practice on the property?—(*A.*) Yes, upon every property over which Mr. Garvey is agent. Upon Sir E. Waller's property it is also the practice. (*Q.*) Suppose two successive proprietors died, one after the other, would the increase be insisted on?—(*A.*) Yes, an increase of a shilling an acre would be put on, even if they died within the same year." Then he gives this as an instance of the rule of the property?—I replied to that at the time.

Mr. *T. W. Russell.*

12036. Do I understand you to say that that was a rule of the property?—No, certainly not.

Mr. *T. M. Healy.*

12037. Was that not so?—No, it was not any such thing at all. The practice of the estate was, that when a tenant died there was a revaluation of the holding made. In some of those cases there had been no change for 40 years, and if it was found that the rent was extraordinarily low, a trifle or a small thing might have been added to it. Now, with regard to Burke's farm, you have referred to that, and if there is no reply of mine, I cannot understand the reason why.

12038. If there is I will read it, but I have not been able to find it; I have looked twice. I have looked carefully to see whether it is there, and I will give you the book to look yourself?—I am not familiar with those books; I should not know where to look for it; but with regard to that particular case (Burke's farm) I think the very fact of Burke making me the executor to his will does not go to show that he was afraid that any injustice would be done if he did know what was the practice of the estate.

12039. You see he says that they reclaimed five or six acres of bog, which was a commonage when he got it, but after Burke's death the same rent was put on that bog which he had reclaimed as on the rest of the farm?—I do not know how far the Rev. Mr. M'Keogh could know anything about what it was when Burke got it, for he was not there.

12040. This is the statement made by Mr. M'Keogh (you have been asked about the scale of tenant right); he says: "On Lord Bloomfield's property last year there were four" (ejectments). "One of them was an ejectment brought against a tenant named Brown, and after having obtained a decree for possession, Mr. Garvey said to him, 'I will give you permission to sell.' There were two years' rent due on the farm, and I think the rent was 145*l.* 'I will give you permission to sell,' said Mr. Garvey, 'but I must have the selection of the tenant, and also the purchase-money must pass through my hands.' (*Q.*) Did the tenant sell?—(*A.*) He did. He had to sell at 500*l.*, because Mr. Garvey would not allow a Catholic into possession of the farm. I knew a Catholic to offer 750*l.* for it, but Brown had to walk out for 500*l.* to Mr. Draper, and to forfeit his right to 250*l.* Two years' rent that was due was stopped out of the 500*l.*, the money was paid into Mr. Garvey's hands, he retained the rent due, gave Burke the balance, and he and his family went to Australia?"—Gave Brown the balance.

12041. Yes?—Now, I suppose I am at liberty to explain what happened there?

12042. Certainly?—You must remember that an agent is acting for another person; and it is perfectly true that a Protestant tenant was in that instance preferred to succeed a Protestant tenant. You must remember that the Protestant church has been disestablished. Brown, who was a Protestant tenant, contributed 4*l.* a year to the assessment fund of that church. Brown was permitted to sell his interest, but there was no tenant-right on the estate at all, and the owner of the property did prefer the Protestant tenant. It was a large farm adjoining the Protestant church; in fact, the Protestant church was on the land, or adjoining the land; it was adjoining a small demesne of the owner, and Brown, with the utmost goodwill and thankfulness, resigned in favour of the Protestant tenant. A Roman Catholic tenant for whom I have a very great regard came to me on the estate and said: "Oh, sir, I would like to get that farm; I think you should give it to me; you know me very well and I think that I ought to get it, and I will give Brown, or you, so much for it."

12043. Was it 750*l.* that he offered?—I really do not know; I could not charge my memory with it.

Mr. *Hayes Fisher.*

12044. Was it more than 500*l.*?—Yes, I think it was more than 500*l.* I said to him: "Well, now I will be perfectly candid with you. There is nothing to allege against you in any way, but there is a very great struggle to keep the church open in this district for the few Protestant tenants that are round about it, and if the contribution to the church is cut off the consequences very likely will be that the door will have to be closed, and where a Protestant tenant has been in the place before, I do not think you will say that it is very unfair of the landlord to wish that a Protestant tenant should succeed." "Oh," he said: "Sure you would not like that to be known;" I said: "You may go and put it up in the market-square if you like, so far as I am concerned. I do not think there is anything bigoted or unfair in that."

Mr. *T. M. Healy.*

12045. That is the whole story?—That is the whole story.

12046. You say the tenant-right did not exist at that time, but it was allowed; was it allowed to Protestants and denied to Catholics?—No, no difference in the world was made. The

Mr. *T. M. Healy*—continued.

fact of the matter was that Brown had the lease and he was allowed to sell his interest in the lease.

12047. Listen to this: "Are sales usually permitted on this estate?—(*A.*) Never; those were exceptional cases, and it was only because they were in arrear, and they did not want to be at the loss of the arrears, that they permitted the tenant to sell on condition that the purchase money should pass through their minds. (*Q.*) And put a limit on the selection of the purchaser?—(*A.*) Yes, they selected the purchaser themselves." Does that correctly represent the then rule on the estate as to tenant right, that you never allowed the sale of tenant right except in exceptional cases. When the parties were in arrear and the landlord did not want to lose the arrears, you then allowed the tenant to sell, and then the purchase money was brought in and you deducted the arrears of rent from the purchase money?—It is quite right, as a rule the tenants were not permitted to sell; there was no tenant right established on the property; it was entirely free from it; and they were not permitted to sell. Some farms on that estate are in the hands of the same families at the present time that they were 100 years ago; or 80 years ago, at all events.

12048. Did you ever object to marriages on the estate?—No.

12049. This is in answer to Question 37092: "If a father wants to get his son married he has to get permission from the agent; he can't do it without the permission of the agent. (*Q.*) Is the object of that to prevent sub-division?—(*A.*) Not at all. During the six years I have been in connection with the parish, I have not known a case where the father sub-divided. I don't think the people have any ambition to sub-divide. (*Q.*) Then what is the object of the agent interfering with marriages?—(*A.*) I cannot say. (*Q.*) Do you mean to say that if young people get married, and went to America, there would be any interference?—(*A.*) No; but if a man wanted to get his son or daughter married, and they were to get the farm in succession to the father, then there would be an increase of rent, but they never acknowledge the son as a tenant during the life of the father, but 1*s.* an acre, or whatever increase of rent they wish to put on, is put on by way of fine for the son getting married"?—That is an absolute falsehood.

12050. Without any foundation whatever?—I mean as regards putting on a fine; I say that it is not true.

12051. What portion of it is true?—The only portion of it that is true is that we always objected to a second family living in the house without the consent of the parents. Very often a son wanted to get married and become the tenant, and, as that says there, a son was never accepted as tenant during the lifetime of the father.

12052. Then the landlord and the agent with the parents constituted themselves a sort of *conseil de famille* as I understand; was that the view that was entertained?—No; complaints frequently were made of family disputes and interruptions, and hardships incurred, as, for example, by the son usurping the authority, and taking all control out of the hands of the father, I will not say "frequently," but "occasionally;" that occasionally did happen. We had nothing to do with the marriages of the people, they were free to marry who they liked; but we always wished it to be made known that the parents were consenting parties to the eldest son (the son who was to succeed) being married.

Mr. *W. Kenny.*

12053. May I ask were there any fines exacted, or any increase of rent upon such occasions?—Never; I cannot imagine what gave rise to such a statement. This gentleman, who says he had only been there for six years, made that statement, and there was not the smallest shadow of foundation for it.

Mr. *T. M. Healy.*

12054. An absolute falsehood?—Yes.

12055. What was your objection to the tenants on the estate keeping goats?—Because they are very destructive to hedges.

12056. Destructive and dangerous?—Destructive to hedges, and to plantations. It was an estate upon which a great deal of expenditure had been made by the landlord in making hedges on the farms of the estate some years ago. A great deal of money had been expended by the landlord in fencing the estate, and in planting hedges in different farms at different places on the estate; and everybody knows that goats are most destructive.

Mr. *T. W. Russell.*

12057. There are a large number of them in Ireland, are there not?—There are, and they are useful things when properly kept.

Mr. *W. Kenny.*

12058. I believe they have been sometimes called "chartered libertines?"—Well, there is an extra fine for them. If a man is brought up at petty sessions for having a goat on the public road, there is a fine in respect of the goat in excess of any other animal.

Mr. *T. M. Healy.*

12059. Was it on Lord Bloomfield's property that all this money was spent on making hedges?—Yes.

12060. And it was to that property then that your objection was confined?—No, it was not; it was the same thing in other properties.

12061. And had the landlords spent a great deal of money on the other properties?—In some cases.

12062. Would you give us the names of the other properties on which the landlords had spent money in making hedges?—I do not say that the landlords generally had expended a great deal of money in making hedges upon other estates. Goats were objected to unless they were kept tethered.

12063. You deny that the bailiff shot the goats?—Yes.

12064. Did you inquire into the matter?—Yes.

12065. And

Mr. *T. M. Healy*—continued.

12065. And that was untrue?—Perfectly untrue.

12066. Is the bailiff still there?—No, he is dead; his son is there.

12067. Do you keep a record of the ejectments on your properties?—Yes.

12068. Should you have any difficulty in giving the Committee a list of the ejectments that you have issued, and the actions for rent in the superior and inferior Courts since you became agent?—Do you mean since my father's death in 1879?

12069. Something like that; yes?—Not the least difficulty in the world.

12070. How many would they be, roughly speaking?—The ejectments where tenants have been actually dispossessed?

12071. No, I mean, first and foremost (we then get at the average), the number of ejectments issued; then the number of actual dispossessions?—I could not tell you the number of ejectments issued without reference to my books; but I think I could from memory tell you, perhaps, the actual number of tenants dispossessed, out of all the estates I have anything to do with, since that year.

12072. You might give us that, perhaps, if you would. You are speaking of people, of course, absolutely "sheriffed out," not of those whose tenancy was broken?—No, I am speaking of those who were dispossessed and not readmitted. Since the year 1879, I think that I am not understating the number if I say that out of 1,200 tenants there have not been 10.

12073. Sheriffed out?—No, not more than that.

12074. Can you give us any idea whatever of the number of ejectments actually issued; that is to say, proceeded upon?—I could not. What do you mean by "proceeded upon"; do you mean actually served upon tenants?

12075. Yes?—I could not give you any idea at this moment.

12076. I suppose it would be wrong to say that it would run into more than three figures?—I daresay it would; but I could not tell you without reference to my books.

12077. What is the average per annum of ejectments served on tenants?—I could not tell you.

12078. Is it so large or so small?—It would be a mere guess. There are many Sessions when there are no ejectments at all; there are some Sessions when, perhaps, there might be eight or 10, or perhaps 20, and all settled. There are many many Sessions in which ejectments have been served, and they were all settled before they came on for hearing.

12079. Do you proceed by action for ejectment, or by action for rent?—Sometimes by civil bill, and sometimes by ejectment; it varies.

12080. Is this statement true (37155), Rev. James M'Keogh: "I know a case that occurred four years ago on Lord Bloomfield's property, where a man ploughed up a three-acre field early in the year, in January, and even built a limekiln on his farm, and drew limestone three and four miles to it; but not having asked permission to do it, Captain Garvey stopped him, and he had to wait till the following year, when

Mr. *T. M. Healy*—continued.

the agent gave him permission to plough it up. That land lay waste for a year, and the man had to pay a year's rent for nothing. (Mr. *Kavanagh.*) Because he did it without asking permission?—(*A.*) Yes. (*Q.*) When was that?—(*A.*) That was in 1876"?—Does he give the man's name?

12081. I have read it exactly as it appears here?—I never heard of it.

12082. You never heard of that?—No.

12083. Now you have told us that round the town of Birr there was a great deal of competition for land, in the year 1855 you put it at?—In 1853.

12084. Just after the famine?—Some years after.

12085. Does that competition still prevail in this town of Birr?—There is a considerable demand for town parks there still.

12086. Has Birr been held to be a town which may have town parks; I presume it has?—Yes.

12087. How many "dismisses" have there been for town parks?—I really do not know outside my own experience.

12088. Are you an agent of all the land of Birr abutting on the town?—No; I am not. There are portions of it that are leased away. Lord Rosse is the head landlord; he gets a ground rent out of the town; there are a great many others who have substantial interests in it, much more than he has.

12089. Are these leaseholds agricultural property?—Some of them. Some of the land adjoining the town goes with the houses in the town.

12090. What would be the length of these leases?—Some of them were in perpetuity.

12091. I suppose it would tend greatly to the stability of the town that shopkeepers should hold land in perpetuity attached to their houses?—No doubt it would, if it was not too extensive. The quantity of the land that is generally attached to the houses in those leaseholds does not exceed two or three acres.

12092. That would be generally speaking, about the size of a town park, would it not?—Yes. A town park would be a simple field, you mean?

12093. Yes?—Very many of them are much larger than that.

12094. Would you give us the rents, speaking generally, from memory, of town parks in your agency about Birr?—From 50*s.* (2*l.* 10*s.*) an acre to 5*l.*

12095. Is this per English or per Irish acre?—Per Irish acre.

12096. On land further out from Birr than town parks, how high do the rents go?—That depends on how far out you go. If they are so far distant as not to be affected by proximity, about a pound an acre.

12097. The difference between a pound an acre and two, or three, or four, or five pounds an acre; is that proximity value or accommodation value?—It is both.

12098. How much would you put for proximity and how much for accommodation value?—Will you distinguish for me?

12099. I can only use the language of the

Mr. *T. M. Healy*—continued.

law. The definition of a town park you know very well?—Yes.

12100. It requires three elements to constitute a town park?—Yes, accommodation is one.

12101. One is that it bears an increased value as accommodation land?—It bears an increased value as accommodation land.

12102. And that has been held to be a distinct thing from proximity value?—Yes, as accommodation land.

12103. That means as accommodation land, I understand, to a man holding a town house?—Yes.

12104. How much of the difference between a pound an acre and two, or three, or four, or five pounds an acre would you put for proximity, and how much for accommodation value?—If there is a difference of course the proximity value must depend upon the distance; if it is very close to the town the proximity value will be more; and it will diminish the further out you go.

12105. I will put the question in this way: What would you put on a townsman in the town of Birr for pure and simple accommodation value as distinct from proximity?—I cannot divide the two things, I do not understand the difference between proximity and accommodation.

12106. Very well, that is fair enough?—I can easily answer you as to what I understand by "proximity," when it affects an agricultural holding that is near a town; but as to the distinction between "proximity" and "accommodation" to a man living in the town, I really am not able to draw the difference.

12107. Then you think an ordinary practical man cannot disentangle the difference between proximity and accommodation value?—With regard to persons living in the town?

12108. Yes?—Well, I only answer for myself; I do not grasp it at present.

12109. Then it is a judicial distinction, which you do not follow as a practical man?—No, I do not follow it.

Mr. *W. Kenny.*

12110. You referred to a case put by Mr. Healy just now, as apparently rather a hard case on a tenant. The name was not given, but it happened in 1876 as near as I gathered from Mr. Healy's reading of the Report. You were agent then, I believe?—My father was the agent.

12111. Were you in your father's office then?—Yes.

12112. Were you assisting him?—Yes.

12113. Were you taking an active part in the management of the estate?—Yes.

12114. But, as I understand, you cannot call to mind that case?—No.

Mr. *T. W. Russell.*

12115. Do you remember it being referred to by the Commission?—The reading of it does not bring it back to my memory as being referred to at the Commission. There is not a farm upon that estate, or any other estate that I have anything to do with, that I do not know personally, but I cannot remember anything at all of such a case as that.

Mr. *Leese.*

12116. Are there many limekilns on that estate?—No, there are not. There was one limekiln built by the landlord for the accommodation of the estate.

12117. Was that in 1876?—That was built in or about 1876. He built that limekiln altogether at his own expense, for the accommodation of the estate.

Mr. *W. Kenny.*

12118. Mr. Healy also read from Father M'Keogh's evidence before the Bessborough Commission of 1880, in which he stated that it was the rule upon all the estates over which your father was agent that there should be an increase of rent upon the death of an old tenant. Was there any such general rule?—No; there was no such general rule whatsoever.

12119. The only rule that did exist was that there should be a valuation upon the death of the tenant?—Even that was not a laid down rule, it often happened that there was a re-valuation on the death of a tenant, but there was no estate rule upon any of the estates to that effect at all.

12120. Every case had to be determined upon its own circumstances?—Upon its own circumstances. There never was any increase of rent during the life of the tenant.

12121. You are quite sure of that?—Yes; no tenant's rent was increased during his life unless he got an addition of land or expenditure on the part of the landlord; but on the death of a tenant there was very often a re-valuation.

Mr. *T. M. Healy.*

12122. I have gone through the Appendix again to see whether there was any contradiction of this statement?—Is there any reply of mine, may I ask, in the Appendix at all.

12123. No, there is not?—There was a reply sent to contradict. Is there absolutely no reply, except what I was able to state before the Commission?

12124. No, none?—Well, I am able to state that that evidence was sent down to me, and I replied to it, and that I have seen it published in a Blue Book.

12125. It may be that the index is at fault?—It may be.

Mr. *W. Kenny.*

12126. You also stated, I think, in your evidence that some tenants had difficulty in paying rent. That was your evidence, I think, in 1886?—That some had more than others

12127. Did that evidence of yours apply to tenants who had not had judicial rents fixed, or did it apply equally to tenants who had had judicial rents fixed?—What year was that in?

12128. In 1886, before the Cowper Commission?—That applied, I think, to tenants generally.

12129. Then had you in your mind at the time the idea that some of those who had had rents fixed

Mr. *W. Kenny*—continued.

fixed might have a difficulty in paying these rents too?—Yes, I had.

12130. You gave us some evidence about the Poor Law Valuation upon the estate, and you were asked what was the date of Griffiths' Valuation. I think you said 1852?—Yes.

12131. Was that a year of low prices?—That was a year of low prices.

12132. Exceptionally low, I believe?—Yes, they were low prices in that year.

12133. You also said that reductions were given upon Lord Rosse's estate, and upon Mr. Toler's; was that observation of yours confined to reductions to leaseholders?—No, not at all to leaseholders.

12134. But applies to all tenants?—To all tenants.

12135. Can you name any other estate on which reductions were made as well as these two?—Every estate I had anything to do with.

12136. Will you give us the names of the others?—I will.

Mr. *Sexton.*

12137. We have never had the full enumeration of the estates yet?—Of estates that are in my charge, there is Lord Rosse's estate; Mr. Hector Toler's estate; Sir Charles Waller's estate; Mr. Frederick Bennett's estate; the Hamilton estate; the Kemmis estate; the Lefenue estate; the Armstrong estate, and the Kingscote estate.

Mr. *W. Kenny.*

12138. How many counties do those range over?—Most of those are in King's County, and some are in Tipperary.

12139. Have you any in Limerick or Cork?—I have some in Cork. Some of those properties (portions of them) are in Cork. What I have referred to there as the Hamilton estate has some in Cork.

12140. Do you know anything about the Cosby estate?—No.

12141. Have you known cases in your experience with reference to these drainage charges in which, when the fair rent was fixed, it was reduced below what the original rent was, and still the landlord had to continue to pay the drainage charges?—Yes, I have. That has happened on the Banon estate, which is another.

12142. In such a case as that, I presume the Commissioners must have come to the conclusion that the works done by the Board of Works did not give any increased value?—I do not know; I cannot tell what was in their minds.

12143. But, at any rate, the interest (up to which the judicial rent was fixed which had been paid by the tenant) on the expenditure of the Board of Works was knocked off completely?—That was knocked off completely, and more than that.

Mr. *T. M. Healy.*

12144. Going back to what I was asking you a short time since on the proceedings of the Bessborough Commission, I find you are quite correct in saying that you did reply, and it is only fair to you that I should read this correc-

Mr. *T. M. Healy*—continued.

tion: "Statement of Toler R. Garvey, Esq."—"37074. There has not been a general increase of rent upon Lord Bloomfield's property, and it is not true that the rent is always increased on the death of a tenant. The rents of many of the farms of the estate have not been changed for 40 years. The practice has been not to alter the rent during a tenant's life. On his death the holding is re-valued, and if the rent is much below the fair value a moderate increase is put on, taking care to exclude from the valuation any improvements made by the tenant. In many instance the succession goes on without any increase of rent whatever. It is well-known the rents of the estate are very moderate. As to Martin Burke, he held 66½ Irish acres, at a rent of 66*l.* 9*s.* 6*d.*, or 1*l.* per Irish acre, an absurdly low rent for one of the best dairy and meadow farms on the estate. After Martin Burke's death the rent was increased by 16*l.* 10*s.* 6*d.*, not 25*l.*, a year. This made the rent 25*s.* per acre. It is worth 35*s.* per acre. The increased rent was handed back to Mrs. Burke at each payment except the last, when only half the increase was charged." Then as to another tenant whose name is not given: "(37075-8.) 16*l.* 10*s.* 6*d.* The tenant is resident. It is an excellent meadow and grazing farm on which the tenant keeps 20 dairy cows besides much young stock. The six acres of rough land were let to Martin Burke free of rent for many years to be reclaimed. They were added to his holding from 1st November 1863, at 10*s.* an acre. (37079.) There was no increase for bog beyond the 16*l.* 10*s.* 6*d.* already referred to. I heard in an indirect way that Martin Burke had made me one of the executors to his will, and the Rev. Mr. M'Keogh the other, but I was never informed of the fact by Mrs. Burke, nor was I called upon by anyone on behalf of the family to act." Then you say as to the Protestant tenant: "Brown sold to a man of large capital approved by the landlord, who selected a Protestant, as the farm had always been held by a Protestant. The one and only farm taken up of the three referred to had been held by a Roman Catholic, and was again let to a Catholic. It is not true that the purchase money was paid into my hands. The incoming tenant, Mr. Draper, paid up the rent due, one year, and paid the balance of the purchase money over to Brown. I paid Brown a gratuity of 15*l.* from the landlord. (37085) No increase of rent at any time, except 5 per cent. charged on 500*l.* expended by landlord in building a dwelling-house for tenant. Very superior farm buildings had been erected at great cost to landlord, and no interest charged. (37086.) No improvements effected by tenant and no money borrowed from Board of Works. (37087.) William Walters owed a year's rent, and was served with ejectment. He was forgiven a quarter's rent, 21*l.* 11*s.* 9*d.* He paid up the remainder, and is still in possession. (37088.) This is not true; no such case occurred. (37089.) This is not the case. (37090.) Sales of farms are not permitted (except in cases of leases), as no tenant-right exists on the estate. If a tenant wishes to leave (which very rarely occurs) he is compensated to

Mr. *T. M. Healy*—continued.

the full for any improvements he may have effected, and a good deal more besides. It is not true sales were permitted on condition that the purchase money should pass through the agent's hands. (37091–2.) If a tenant's son marries before the other children of the family are provided for, and brings his wife to live with his father, mother, brothers, and sisters, quarrelling almost invariably ensues, and the agent is constantly appealed to by each party with complaints of the other. We have used our influence to prevent this; sometimes successfully and sometimes not; but no man has ever been forbidden to marry, and no one has ever been evicted, fined, or rent increased for marrying. (37093–5.) Of course the son is not acknowledged as tenant during the father's life, unless the latter specially desires it. It is absolutely untrue that a shilling an acre or any increase whatever by way of fine or otherwise is imposed for the son getting married"?—Yes; that is the statement I sent in.

Mr. *W. Kenny.*

12145. You have heard that evidence read by Mr. Healy?—Yes.

12146. I believe it substantially coincides with the evidence you have given to-day as to this increase of rent and fines upon marrying?—Yes, I think so.

12147. You were asked about agreements that have been come to between landlord and tenant out of Court. Are you able to tell us whether or not these agreements were generally come to upon the application of the tenant to the landlord?—In my case they were always on the application of the tenant, I never asked a tenant to make a settlement out of Court.

12148. Have you discontinued the practice?—I have discontinued the practice; I prefer the Land Commission Court to any private settlement.

12149. So you let tenants go into Court whenever they wish?—I have always encouraged them to go into court. Perhaps as that Bloomfield and Kingscote Estate has been referred to, might I mention that the judicial rents have been reduced upon that estate only 10 per cent., which I think is pretty good evidence that the rents were fair.

12150. Do you mean under the Act of 1887?—No, under the Act of 1881.

Chairman.

12151. You mean the old rents?—The old rents have only been reduced 10 per cent., and the Legal Commissioner said in delivering judgment that the rents on that estate were most moderate.

Mr. *Sexton.*

12152. On the average?—On the average, yes.

Mr. *W. Kenny.*

12153. And in what year or years were these rents fixed by the Commission?—In 1882 and 1883.

12154. In reference to the sales of tenants' interests, you have given us some evidence as to their selling well?—Yes.

12155. I do not know whether you are able to tell us of the number of years' purchase that has been obtained in any of the cases?—The most recent instances that have been brought to my notice are on that very estate, and last year a farm of 30*l.* judicial rent, 30*l.* Poor Law Valuation, 30 Irish acres in extent, was sold for 600*l.*; the interest on it was sold for 600*l.*, and it was considered the worst farm on the estate.

Mr. *Sexton.*

12156. When was it sold?—Last year, in 1893.

Mr. *W. Kenny.*

12157. That is 20 years' purchase?—And the other day a small farm on the same estate was offered for sale, judicial rent 12*l.*, extent 16 Irish acres; 240*l.* was bid for the tenant's interest, and the tenant would not sell because he did not get 300*l.*

12158. That would have been 20 years' purchase again?—Yes. He wanted 300*l.* and said he would not sell it for less.

12159. When tenants claim improvements on their originating notices, you see, so far as the tenant states them, what the claims are by looking at the back of the notice?—Yes.

12160. Has it been your habit, representing your principal on this estate, to dispute these claims of the tenants with reference to alleged improvements?—Of course, when I get the notices, I go to the farms and see how far the improvements have been effected or not, and I dispute any of them that I consider are not reasonable or that have not been effected at all, and those that have had no result.

12161. And have you, as a general rule, succeeded in maintaining any objections made by you on these grounds?—Yes, I think I always have when I have made objections. I do not make objections unless they are reasonable.

12162. That is what I was going to ask you. If you find a reasonable claim made by a tenant to improvements which you see, do you place any obstructions in the way of his getting allowances?—None whatever.

Mr. *Sexton.*

12163. If the improvement was made before your time, would you object to it?—Well, if I found that the improvement was made before my time and resulted in nothing; if, for instance, some drainage had been done a very great number of years ago and the land had relapsed back again into its old state I would object to it.

12164. The law does not consider that an improvement at all; to be an improvement at all it must add to the letting value?—If it is visible I do not object. Those are things in which the valuers must exercise a discretion.

Mr. *W. Kenny.*

12165. In your experience have you found that the tenants have any difficulty in proving their improvements before the Sub-Commissioners?—None whatever; they are always assisted by a very experienced solicitor, who is thoroughly up to the law.

12166. Is the tenant generally assisted by an ancient neighbour?—If he wants to prove any improvement that he is not able to prove himself, he always is. I had a very strong instance of that

Mr. *W. Kenny*—continued.

that in the Sub-Commission Court only the week before last.

12167. In which an aged inhabitant of the place was brought up to prove an improvement?—Yes.

12168. Do you find that the smaller landlords have any difficulty in proving any improvements made by them. Are there estate records in these small cases?—I think, as a rule, there are not. I think small landlords who have not any agents, and do not keep books themselves very accurately, are not always able to prove the allowances. I think their improvements have been more contributed in the shape of allowances than anything else.

12169. That is the allowances you have told us of, slating, roofing, and so on?—Yes; and the allowances in rent for those sort of things.

12170. Have remissions in rent been made to compensate for improvements?—Yes, that is generally the way it is done. When the tenant came to pay his rent he said: "I have done so much, and so much," and was generally allowed something out of his rent for that.

12171. And in the smaller cases have you found that the small landlords have kept records of these small remissions?—I can only speak from hearsay in that respect; I do not like to give positive evidence of what I am not thoroughly acquainted with.

12172. In reference to the increased letting value, have you found that there is a large amount of drainage and reclamation or the contrary by the tenants?—No; as a rule there has not been a large amount except in drainage districts. In some cases in a particular drainage district there has been a certain proportion of drainage done; some tenants have taken advantage of the outfall to make improvements, that is to say, the outfall afforded by arterial drainage; they have taken advantage of that in some cases.

12173. Is it your experience that the allowance of a percentage to the tenant on his outlay on these improvements amply compensates him for what he has done?—As a rule I think it does amply compensate him, especially in those districts.

12174. Have you found any cases at all in which there would be an increased letting value over and above the percentage that is allowed to the tenant?—Yes.

12175. Mr. Russell says that you have already stated that you know of several cases in which there have been large increases of letting value?—Yes, I do know of many cases.

12176. Large increases of letting value?—Large increases of letting value.

12177. Is that over and above the 5 per cent. that is allowed on the outlay, I want to clear it up?—That is quite over and above anything that may have been allowed for his outlay.

12178. Over and above what may be allowed for the tenant's outlay?—Yes.

12179. Have you known that in many cases?—I cannot say in a great many cases, but I have known it in cases in these drainage districts.

12180. And whenever increased letting value came to be dealt with, do you know upon what principle it was dealt with?—Do you mean by the Commissioners?

Mr. *W. Kenny*—continued.

12181. By the Commissioners?—Well, I really cannot tell; I do not know. All their proceedings are a mystery to us; we do not know what they do.

Mr. *T. W. Russell.*

12182. They have made no mystery about it here?—They make no mystery.

12183. No?—I may have my impressions, you know; I am quite willing to state what my impressions are; but they never tell us what they do upon the land.

Mr. *Sexton.*

12184. But you have the pink reports, so far as that goes?—We never get the pink report except in an appeal case; if there is an appeal case we call for the pink report.

Mr. *W. Kenny.*

12185. Some of the witnesses here have told us that they allow more to the tenant than 5 per cent. upon his outlay; I think some have gone the length of saying that they go as far as 9 and 10 per cent.?—Upon his outlay?

12186. Yes, upon his outlay?—Yes.

12187. In those cases in which you say there have been large increases of letting value do you consider that if 9 or 10 per cent. were allowed that would amply compensate the tenant for the improvement?—Of course it would compensate him for it; but a great deal depends upon the nature of the improvement. If the improvement has been effected upon a very poor subject the result is not very beneficial, nor is it very long in duration, whereas sometimes it is effected at a very much smaller expenditure upon land that yields a very far greater increase, and is very beneficial.

12188. In the cases you last represent there would be a larger inherent capability in the land?—Much larger. That is the thing that I alluded to. In some cases there is very little inherent capacity for improvement, and in other cases there is very large inherent capacity.

12189. And in these cases of course the inherent capacity might be much more easily developed, and at a smaller expense?—Yes, at a smaller expense, that is what I mean.

12190. So that the increase in the letting value would bear no proportion at all to the amount of the expenditure upon it?—No.

12191. I think you told us that the character of the store cattle was going down, declining?—Yes, it had reached a very low point, but it is improving now.

12192. And efforts are being made, I believe in Ireland, to improve the breed?—Yes, I know of several cases in which local farming societies have been revived in the last couple of years.

12193. And the Royal Dublin Society are doing a great deal, are they not, in the distribution of bulls through the country?—The Royal Dublin Society are doing a great deal in that way.

12194. And the Congested District Board, are they assisting too?—They are, no doubt, most materially.

12195. Just a question or two upon this point as to the new procedure at the end of the 15 years;

Mr. *W. Kenny*—continued.

years: as I understand, you consider that if there were a scale of prices that could be worked automatically, you would be in favour of a revision every seven years?—Either the landlord or the tenant should be at liberty to call for a revision every seven years.

12196. But supposing it could not be worked automatically, and that we had to go through this whole process of serving originating notices again, and going before the Sub-Commissioners, do you consider that the period of 15 years is too long or too short?—I think it is about the proper period.

12197. Then your observation as to the seven years is confined simply to cases where there might be an automatic scheme?—Yes.

12198. It was suggested by Mr. Justice Bewley that at the end of the coming period (the 15 years for which rent was fixed in 1881 and onwards) a scheme of this sort might be adopted, that a valuer might be sent down from the Head Commission to inspect the holding and report (the valuer having before him, of course, the valuations made by the Sub-Commissioners before), that then the parties might, if they chose, adopt that valuation, and that then if they did not adopt that valuation they might go again before the Court; that is in non-contentious cases where no question of improvement arises?—I do not much favour that myself; but the great difficulty about it, I think, is in case of disagreement. I would very much rather that two valuers should inspect the land, and see it.

12199. Do you mean two permanent valuers?—No, I mean two of the Commissioners.

12200. You mean two of the permanent valuers in the employment of the Land Commission?—In the employment of the Land Commission, yes.

12201. You prefer that two of them should inspect?—That two of them should inspect.

12202. Would you, then, suggest that their reports should be laid before the landlord and tenant, to see whether they would adopt the valuation?—No, I think that unless the landlord and tenant themselves are able without any assistance to agree between themselves (and, I think, very often they would be able to agree between themselves) then the whole case ought to come before the Court, and be heard before the Court in the usual way.

12203. By "in the usual way," you mean as at present?—In the usual way; I would have it made easy, and made as cheap as possible.

12204. Have you any suggestion at all to make to us from that point of view, as to making it cheaper and easier; it is a matter that presses the Committee very much I think?—I think I have already stated that landlords and tenants are now so familiar with the working of the Land Act that I think they could manage to get on perfectly well without the assistance of either solicitors or valuers.

12205. But that is where they consent to do so; where both landlord and tenant agree to dispense with the services of a solicitor, and so on?—Yes; I think it should be made easy for them to do that, and I think a tenant might very well be able to serve his originating notice himself.

Mr. *W. Kenny*—continued.

12206. And, I understand, that in case they cannot come to an agreement you think the thing must go on upon the old lines?—The thing must go on upon the old lines; it is too serious a matter; there are other questions that are sure to be brought in besides "value," the question of improvements may arise, and I think it is much better in those cases that they should come before the Court, and that a statement should be made in Court.

Mr. *T. W. Russell.*

12207. Of course that would apply against all agreements of any kind whatever; that answer would govern all agreements outside the Court?—Yes.

12208. You not are in favour of agreement at all?—I am in favour of agreement if landlord and tenant could settle between themselves.

12209. But are you in favour of settling these cases on the basis of a valuation by two Sub-Commissioners?—No.

Mr. *W. Kenny.*

12210. That would come to the same thing, would it not?—As I understand, the matter would be left to the two Sub-Commissioners to decide; is that so; would their decision be final?

Mr. *T. W. Russell.*

12211. I do not wish to take you out of Mr. Kenny's hands; but there has been a plan submitted to the Committee by Mr. Bailey, and approved of by several Sub-Commissioners, to this effect: that in all cases where no contention was likely to arise, where there was no question of improvements, for example, where it was only a question of revising the rent at the end of 15 years, Mr. Bailey's proposal was that, instead of going through the process of the Court on an originating notice being served, a Sub-Commissioner should value the holding, that his valuation should be submitted to the landlord and tenant, and that if they agree the rent should become a rule of Court; that is, where no legal questions arise?—But suppose they do not agree.

12212. Then the Sub-Commission Court comes in?—Then, I think, probably the case is prejudiced. I do not fall in with that view; I prefer going through the Court process again.

12213. That is quite an explicit answer?—One great reason for that is that you have the assistance of the legal Commissioner. I think the Chairman's calm and helpful examination is of great use.

12214. Surely the legal Commissioner only interferes on matters of law; he does not interfere on matters of value?—There must be a great deal said besides actual value in all those cases. I strongly object to Commissioners going on the land to rehear the cases at the end of 15 years without a preliminary statement in Court.

Mr. *W. Kenny.*

12215. The legal Commissioner has something to do with it, has he not; supposing his two Sub-Commissioners differ, he has to decide between them?

Mr. *W. Kenny*—continued.

them?—He has a great deal to do with it, and, as a general rule, they have acquired considerable knowledge, even if it is as to nothing but the way of putting questions to witnesses. They always have point in their observations, and they have acquired a very great knowledge of actual agricultural results in different ways.

12216. You have been in Court, of course, when fair rent has been fixed?—Yes.

12217. You have followed the course of the cases?—Yes.

12218. Have you known evidence tendered to the Sub-Commissioners under the words of the 8th Section of the Act of 1881 as to the "circumstances of the case, holding, and district" for the purpose of fixing a fair rent, the circumstances of the district. Have you seen evidence tendered, with reference to sub-lettings in the district of the rents which were derived by middlemen from their sub-tenants, for the purpose of showing what a fair rent ought to be?—Yes; I heard those points raised in the earlier days of the Commission, but I think they were all ruled out.

12219. The Sub-Commissioners, as I understand now, do not allow that evidence?—No. Well, it is sometimes given, but they say: "We cannot interfere with that; that has nothing to do with the case before us; we must simply be guided by the circumstances of the estate we are dealing with, and the case we have in hand."

12220. They value the land as they find it?—Yes, they value the land as they find it.

12221. Do you consider that it wouln be advisable that that class of evidence should be given. Suppose you found sub-lettings around holdings in the immediate vicinity of the holding in question, and that those sub-lettings took place at considerably higher rents in proportion to the rent of the holding itself?—Yes, at a large profit.

12222. At a large profit; do you think that that is a class of evidence that ought to weigh with any person bringing a judicial mind to bear upon that particular question?—I think the Commissioners should make themselves acquainted with the circumstances of the district as far as possible, and especially with the farming of the district, and the best mode of making money and making rent by a particular course of farming; and I think that as regards evidence of sub-letting (though I think that ought to be received for just what it is worth) there may be circumstances in which a sub-letting would take place, and a man would give a great deal more than a tenant could pay as a fair rent for the holding.

Mr. *Fuller.*

12223. I do not quite gather from you in what capacity you act in assisting the Land Commissioners; are you called in on certain special occasions, or when?—As agent of the proprietors, or as acting for myself. With regard to my own tenants, or the tenants of landlords for whom I act, I am obliged to conduct the cases, or at least to be present when the cases are being dealt with. It is in my capacity of agent that I am present.

12224. Have you any particular system of valuing, or is it only your own idea of what a farm is worth for a tenant to give a rent for?—My idea of what a farm is worth is acquired from my practical experience as a farmer and as a valuer over the estates with which I have to do.

Mr. *Fuller*—continued.

12225. That is the same answer that we have got from all other valuers. Would it assist, do you think, other valuers, or valuers in general, if there were any directions given by way of making clear one system of valuation, I mean for the Land Court cases?—For the Land Court valuers: Well, my own idea is that, to be an experienced land valuer, a man ought first of all to have an education as an agriculturist.

12226. I quite understand that; but we have had evidence before us of a number of different systems of valuation, for instance, some want all the improvements to be proved before them; others see an improvement and take for granted that it is an improvement and value it as an improvement; we have evidence before us that some value very much higher certain land than others; and that others value lower. What I want to arrive at is this: do you think it would be an assistance to the Land Commission Court if there were distinct rules laying down a uniform system of valuing various sorts of farms?—I do not think it would be practicable. The classes of land that men have to deal with are so variable that it would be extremely difficult to lay down a hard-and-fast rule of valuation; but as regards improvements the valuers (that is, the Sub Commissioners) always hear those improvements proved in Court, and before they go upon the land they hear what the nature of the improvement is. They have got that all down in their books, and then when they go upon the land they test those improvements to see whether they have added to the value of the land or whether they have not. The difficulty is, if they have been made a very long time, to ascertain how far the improvements have really been effectual or not. I think if you get competent men (and they should be very competent, and I think that they ought to have a very early agricultural training in theory first and in practice afterwards) then I think they must be left a tolerably wide discretion.

12227. Probably you know that as a general rule it takes something considerable to maintain the buildings on a farm?—Yes.

12228. Do you, in your valuation of the farm, take that into consideration and give an allowance: for instance, you take off 10 per cent. or 12 per cent. in getting at the rateable value?—As a rule the buildings belong to the tenant; but one does take into consideration in making up the rent what it will cost to maintain them.

12229. You do?—Yes.

12230. What percentage do you allow?—That altogether depends upon the class of buildings. Some of them take very little repair.

12231. I want to know how you reduce the rent in accordance with the buildings unless you put a capital value upon the buildings themselves. Do you do that first?—No.

12232. Then how do you reduce the rent or make an allowance for repairs?—By estimating what the annual cost would be of keeping those

Mr. *Fuller*—continued.

buildings in order as you see them upon the land.

12233. Upon what basis do you estimate that?—You can estimate that.

12234. You yourself?—I make various estimates according to the class of buildings that I find. I could not put on a uniform rate of percentage. I look at the buildings and I see that there is a thatched cottage, or that there is a slated house, it will cost a man to thatch that cottage perhaps 3*l.*, and to keep it in repair for five years. That is what I have in my mind; and I see that there is a slated building there, a slated cow-house, it would not cost him anything to keep that in repair for 15 years.

12235. Perhaps you will instruct me upon this point: in the valuation for rating in Ireland I suppose the landlords pay a certain proportion of the rates, do not they?—Half the rates generally.

12236. The landlord gets a reduction from the rates, I take it, does he not, for the maintenance and repairs?—Nothing whatever, not off the rating.

12237. Not if he keeps up the building himself?—No.

12238. It is so in England; I thought it might be so in Ireland?—No, it is not so.

Mr. *Leese.*

12239. Are the holdings in Ireland valued for rating purposes separately, buildings and land?—Yes, they are.

12240. And rated separately?—And rated separately.

12241. The landlord pays on the land?—He pays on the whole.

12242. But he gets something back?—No; the tenant pays the poor rates in the first instance upon the gross value, land and buildings added together, and the landlord allows half of what the tenant pays.

Colonel *Waring.*

12243. Suppose the holding to be under 4*l.* a year, and the tenant to be credited with the house, the landlord then really pays the poor rate on the tenant's house?—Yes, he does, he pays for the whole thing.

Mr. *Leese.*

12244. Does he not get it back in rent?—Not a farthing, and more than that, he pays the income tax upon the land and buildings, and he gets back nothing.

Mr. *Fuller.*

12245. You say you act as agent for 1,500 acres; is it 1,500?—No, there are 1,500 tenants.

12246. You occupy 200 acres yourself?—Two hundred acres.

12247. Of your own land?—Of my own land.

12248. And 50 acres you rent?—Yes, 50 acres I rent.

12249. What rent do you pay for that 50 acres?—For the 50 English acres I pay 40*l.* a year, the Poor Law valuation being 22*l.* 10*s.*

12250. What proportion does that 40*l.* a year bear to the gross produce of those 50 acres, can you tell me; I suppose you keep accounts?—Yes, but I do not keep them separate from the rest.

12251. The meaning of my question is this: we have had evidence before us that some valuers put the gross produce at so much, and then take one-third of that gross produce as the proper rent for the landlord; others put it at one-fifth; others at one-sixth; I want to ask you what proportion that 40*l.* bears to your gross produce of that 50 acres in order that I may arrive at the proportion which you think is a fair rent to the landlord. Can you tell me that?—As to the producing power of the land, it is not a very easy thing to lay down the exact proportion of the produce that a landlord ought to get; but on a tillage farm, if the land is properly cultivated, I should say that a third is a right and proper proportion to give in the matter of rent.

12252. Now, as a person occupying land, although it may not be an easy thing for you to fix a rent, it is a very easy thing for a tenant to count how much he gets out of his land for the total produce?—Yes.

12253. Can you tell us how much you get out of your 50 acres, or 200 acres, so that we may judge as to the rent?—I have made up, from my own knowledge, a little account of a 20-acre farm at a rent of 20*l.* a year.

12254. Is this actual fact, or an estimate?—It is based upon actual fact.

12255. I want to know something practical from yourself?—As to my own actual experience as a farmer, I think that one-third of the produce would be a fair rent to pay.

12256. How does that tally with the answer you gave just now, that on a 20-acre farm, half tillage and half pasture, 2½ acres of barley would pay and should pay the rent?—The rent of the holding, yes.

12257. Taking your figures as correct (and I suppose you have prepared them beforehand), it looks as if the rent of that farm instead of being 20*l.* should be 8*l.* or 9*l.*, according to the price you get for the barley. You stated that fact, and we understand from the general average yield of barley in Ireland that it would be about seven sacks to the Irish acre. Is that so, or is it not?—Sixteen barrels to the acre.

12258. I do not know what a "barrel" is?—A barrel of barley is 16 stone; it is an Irish acre that I am referring to. An acre of barley ought to produce 3,582 lbs.

12259. Of weight?—Of weight.

12260. An acre?—An acre.

12261. What do you sell it at per cwt.?—14*s.* a barrel.

12262. If you could tell me what it would be, at so much a barrel, that would tell me something about the rent of your 20 acres. You have told me this fact, that 2½ acres would produce enough barley to pay the rent?—Yes, to pay 20*l.*

12263. Take the barley at 20*s.* or 30*s.* a quarter, as the case may be, and let us know what that would be?—We will take it at less than the average, take it at 13*s.* a barrel, that would be 10*l.* 8*s.* an acre.

12264. How

Mr. *T. M. Healy.*

12264. How many barrels would an acre yield?—I put down 16 barrels to the acre, at 13*s.* a barrel.

Mr. *Fuller.*

12265. That is enormous?—Enormous; I was on land within the last week where the tenant told me he expected 22 barrels to the acre.

Mr. *Leese.*

12266. "Expected"?—Yes. I am putting it down on moderate land, a pound an acre land, and putting it down at 16 barrels to the acre, that, at 13*s.* a barrel, makes 10*l.* 8*s.* an acre.

Mr. *Fuller.*

12267. You can get 10*l.* 8*s.* an acre off barley land in Ireland?—The 2½ acres will produce, when the barley is sold, 10*l.* 8*s.* an acre; the produce of 2½ acres of barley would be 25*l.*, or 26*l.* That is really a very moderate return for an Irish acre, at a low price; some put it at 16*s.* and 18*s.* a barrel; I am putting it at 13*s.*

Mr. *T. M. Healy.*

12268. Barley has sold much lower than 13*s.* these last few years, has it not?—Not last year.

12269. I did not say "last year"?—Nor this, nor the year before; not much has been sold under that, a good deal has been sold over it. I know lots of people who sold barley at 14*s.* 6*d.* and 15*s.*

12270. What about those who sold at 6*s.* and 7*s.*?—There is very little of it sold at that, unless it is inferior barley for pig feeding.

Mr. *Fuller.*

12271. Of course your object in putting on a fair rent is not to rent tenants' improvements?—Yes, certainly.

12272. As a matter of fact, with very few exceptions, the landlord makes no improvements, does he?—He makes no buildings as a rule; as a rule the buildings are made by the tenants.

12273. Therefore all the improvements in the land are done by the tenant?—Improvements are done by the tenant generally.

12274. All of them?—I do not say "all of them."

12275. Except on those particular estates where the landlord makes an allowance?—Yes, where he makes a contribution. There are some large estates not in my charge.

12276. Confine yourself to your own, please?—That is what I wish to do.

12277. Have you come upon any estate where the landlord does all the repairs, maintains them, and pays for the buildings?—According to the English system you mean.

12278. Yes?—No; none.

12279. Then, as a matter of fact, the tenants do all the buildings and all the improvements?—They do; they do them all now since the passing of the Land Act.

12280. Some one must do them, either the landlord or the tenant?—Yes.

12281. The landlord does not do them?—Before the passing of the Land Act the landlord contributed to these improvements.

Mr. *T. W. Russell.*

12282. Always?—Not always.

Mr. *Fuller.*

12283. I am speaking now of your own experience. You tell me you have had no experience of any landlord doing all the repairs and all the improvements?—I know of no such landlords.

12284. Within your own knowledge you know of none?—No, not on the estates in my own charge.

12285. Then if the landlords make none of the improvements and pay for none of the buildings, the tenant must?—Of course they do; they must keep them in repair.

12286. Then, as far as I understand it, it is impossible not to rent the tenants upon their improvements?—Why?

12287. If the tenants do the improvements and the landlord does none, and you put rent upon those improvements, who are you renting?—We do not put any rent upon buildings at all.

12288. I do not include only buildings, but the general improvement of the land?—Please to separate them; it is very essential that those two things should be separated.

12289. How do you separate them; what are the improvements that the landlord has done; this is the landlord's interest?—Contribution towards maintaining the buildings, and contributions occasionally towards drainage and reclamation.

12290. What proportion would that contribution bear to the general outlay on an ordinary farm?—Where those contributions have been made they would generally bear a proportion of one-third, or about one-half.

12291. Could you give us any figures to that extent?—I can easily supply figures where improvements have been effected by tenants to which the landlord contributed one-half. I can give you any amount of them.

12292. I am speaking of the whole farm; the buildings and everything included?—Yes.

Mr. *T. W. Russell.*

12293. In those cases where the landlord contributed one-half to the improvements, is there any alteration in the rent?—No.

Mr. *Fuller.*

12294. Do you generally value then upon the assumption that the landlord's interest is about half the tenant's interest in the farm; is that it?—I do not make it upon that basis. I say the landlord could not get anything like half the tenant's interest in the shape of rent for the land; the tenant's interest far exceeds that.

12295. Do you mean to say that when you fix a rent upon a building, the gross rent payable, supposing the landlord did all the repairs, would be double what the tenant pays?—No, I do not mean to say that. When you talk about a "tenant's interest," I understand you mean the improvable value.

12296. You do not take into consideration, do you,

Mr. *Fuller*—continued.

you, what the tenant gets for the tenant's interest?—We do not take that into consideration in valuing for a fair rent.

12297. What do you consider to be the tenant's interest; what are the principal items that go to make up the tenant's interest?—Apart from his buildings, as a rule, simply the interest that the law confers upon him.

12298. What is that?—The interest to sell the holding to the highest bidder.

12299. Do you value his interest in that?—No.

12300. I thought I understood you to say that the law says he may have that?—At present, under the Land Act, the law gives him a right to sell his interest in his holding, subject to pre-emption by the landlord.

12301. Yet in putting a rent on you do not take that into consideration at all?—No; certainly not.

12302. Then what do you put down as the tenant's interest, how much in proportion to the whole?—I do not quite understand what you mean by the "tenant's interest."

12303. I want to ascertain that from you?—Do you mean what interest, per acre a tenant is supposed to have in his land over and above what would be a fair rent, if that tenant wanted to let the land himself again?

12304. The question I should like to ask you is this: What proportion of the rent that you fix upon the land would be the rent upon the tenant's interest, and how much upon the landlord's interest?—Nothing upon the tenant's interest.

12305. Nothing upon the tenant's interest?—No.

12306. But if the tenant has done all the improvements you must put something upon it?—We do not put any rent upon the tenant's improvements. We never put any rent upon the tenant's improvements; on the contrary, instead of valuing the land as it would be if it were in the open market, we allow the tenant something off for an occupation interest.

12307. I understood you to say just now that the tenant's interest and the landlord's interest were identical, were equal?—Oh, no.

12308. Will you just continue that. You say the buildings are part of the tenant's interest, and what else?—The buildings are part of the tenant's interest.

12309. Yes, and what else?—Any improvements he may have effected are his interest that he has to dispose of. Would you define, please, for me, what you mean by the "tenant's interest"?

12310. That is the question I ask you. Now take a piece of land, say four acres of land, that has been under water, and in that state was worthless to the tenant; he has drained it at a cost of 5*l.* an acre (supposing that was done 60 or 70 years ago by some of his predecessors), the value is improved from nothing to the value of a pound an acre; now what rent would you put upon that land for the landlord?—Now I think I can answer you. If I am satisfied that the improvements have been actually made by the tenant (and assuming what you say to be the case) I consider then I am to take into consideration that he has enjoyed the improvement for 60 or 70 years without any rent at all being fixed upon him. I then say: "Well, as he has turned this soil, which belonged to the landlord, into profitable land, and has had the enjoyment and use of it for 60 or 70 years, it is reasonable that the landlord should have a share of it."

12311. What share?—A share for the occupation of 60 or 70 years during which the tenant has enjoyed it for nothing; I should give the landlord half.

12312. On what basis do you come to that conclusion?—The basis upon which I come to that conclusion is just this: If a tenant had taken that land on lease to improve it, and the landlord had let it to him for nothing; if he had taken it on a lease, say, of 31 years, and had expended his money upon it, at the end of that time the landlord would be entitled to come in and say: "You have now had your enjoyment of this land for your bargain; it is time I should get the full value of the land"; but when I come now, I say, the power no longer exists in the landlord to develope the property or capacity in that land which belonged to him; the tenant has done it, and as the tenant has done it, it is for the benefit of the landlord, as well as himself, that it has been developed, and I would in consequence of the tenant's motion in the matter, he having developed the inherent property and capacity of the land, divide it equally between them.

12313. On the ground that the landlord has done nothing towards the improvement?—On the ground that the landlord has done nothing towards the improvement, and on the ground that the tenant has enjoyed it for 60 years for nothing.

Mr. *W. Kenny.*

12314. If I may interrupt, I presume you would say on the ground that the enjoyment over such a length of time has recouped the tenant his capital?—That must be so, when the land has been made worth a pound an acre for nothing.

Mr. *Fuller.*

12315. The tenant, in this particular case, has laid out 20*l.* of his own money years ago?—Yes.

12316. Has not he a right to the interest of that 20*l.*, and something for not leaving the water on the land, and the land of no good to anybody. Has the landlord any right to get interest on that for having done nothing? The tenant would have had interest on that 20*l.* had he not laid it out in drainage, and would have enjoyed that 20*l.* without any trouble of draining or cultivating the land; and the landlord would have received nothing in those 60 years?—Yes.

12317. I want to know then, why you think the enjoyment he has had of letting the interest of that 20*l.* come out in the shape of cultivating the land, why he, having laid out that money, should go and offer the value of that interest of money to the landlord, is that any "enjoyment?"—Yes, because he has laid it out upon what belonged to the landlord.

12318. But

Mr. *Fuller*—continued.

12318. But does that give value to the landlord. At all events, the tenant has made it of the value of one-half, as I understand the way in which you put it?—Yes.

12319. Now is not that renting a tenant's improvements. You and I are not lawyers evidently?—No, I am not a lawyer.

12320. We are practical men, perhaps, in our way: Is not that renting a tenant's improvement?—Of course, after he has been recouped.

12321. Therefore I come to this point, is it not impossible, in this state of the law, to keep to the letter of the law: "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid, or otherwise compensated by the landlord or his predecessors in title." Is not that absolutely impossible to be done by valuers at the present time?—Will you kindly read that again for me?

12322. Well, it is well known to all lawyers, but not so well known to us: "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title, shall not have been paid, or otherwise compensated by the landlord or his predecessors in title"?—Of course the inference is that no rent is to be put upon the improvements that have not recouped the tenant.

12323. That is not there?—No.

Mr. *W. Kenny.*

12324. In the case put by Mr. Fuller, you are not putting rent upon the tenant's improvements, are you?—Certainly not, so far as I understand the matter.

Mr. *W. Kenny*—continued.

Colonel *Waring.*

12325. You gave one answer which I should like to clear up: Had the 1881 Act not passed, the landlord could have taken that land into his own hands and reclaimed it himself, could he not?—He would have been entitled to do it.

12326. With the 1881 Act he can no longer do that, can he?—No; he can no longer do that.

12327. Consequently, he could not develop its inherent improvability?—That is the reason why I want to give the tenant the benefit of it.

Mr. *Leese.*

12328. I suppose 60 years ago this land which was reclaimed, which was then covered with water, was rented at a very low rent?—Mr. Fuller puts it down at nothing.

12329. If covered with water it would be rented very low indeed, would it not?—Very low.

12330. At the end of 60 years it would be probably rented pretty high, would it not, when reclaimed?—At the end of 60 years the rent would be increased.

12331. Notwithstanding that there has been an increase of rent from the time it was moss, or a morass, which was drained between 60 years ago and now, still when you come to consider the improvement you give half to the landlord and half to the tenant; you do that although there has been an increase of rent in the meantime?—But, as Mr. Fuller put the question to me, there was no increase of rent; there was increase of value, but not of rent.

Tuesday, 31*st July* 1894.

MEMBERS PRESENT:

Mr. Brodrick.	Mr. W. Kenny.
Mr. Carson.	Mr. Leese.
Mr. Clancy.	Mr. Macartney.
Mr. Dillon.	Mr. John Morley.
Mr. Hayes Fisher.	Mr. T. W. Russell.
Mr. Fuller.	Mr. Sexton.
Mr. T. M. Healy.	Colonel Waring.

THE RIGHT HONOURABLE JOHN MORLEY IN THE CHAIR.

Mr. TOLER R. GARVEY, again called in; and further Examined.

Mr. *Fuller*.

12332. WE have had it in evidence that the smaller holdings are generally rented higher in the fixing of the fair rents than the larger ones, is that your experience?—It is not my experience. It is my experience that the tenants' interests in the smaller holdings sell for a larger sum than the tenants' interests in the larger holdings; but it is not my experience that they are rented higher than the larger holdings.

12333. In proportion to their size?—In proportion to their size.

12334. That would naturally follow because the tenants' improvements are larger and more expensive in proportion to a small holding than to a large one, is that your reason?—No; I do not think that is the reason, because the buildings on the small holdings in the south, with which I am connected, are not very valuable, not at all as valuable as the buildings on the larger holdings.

12335. Then we have also had in evidence, that, where a tenant deteriorates the cultivating properties of the soil, it is a hardship upon the landlord, because the valuers very often fix the rent according to the condition of the soil, and not according to what the soil is capable of carrying; do you think that is a hardship to the landlord?—I do.

12336. Does it occur to you that all the improving properties of the soil are developed more by the tenant than by the landlord, and that therefore they are tenant's improvements?—I do not think that all the properties of the soil are developed by the tenant, as a rule.

12337. But would not the high cultivation of the land by a tenant, so as to make the land appear to a valuer worthy of a higher rent, be a tenant's improvement?—I do not think it can be called a "tenant's improvement," in the sense of what "improvements" means under the Land Act, that the tenant is to be compensated for.

12338. I want you to confine yourself to your experience as a valuer, and not as a lawyer.

Mr. *Fuller*—continued.

Would it not appear to you, as a valuer, where you see high cultivation, that that land is capable of bearing a higher rent, when it is highly cultivated, than it would bear if it was badly cultivated?—To a certain extent.

12339. When you say "to a certain extent" to what extent do you mean?—I think the good appearance of the land has a certain effect. The good appearance, or the contrary, has a certain effect upon the valuer's mind.

12340. But you cannot say what effect?—I cannot say what effect, unless he is a very skilled valuer and understands really what the inherent property of the soil is.

12341. Then the result would be that he would put a higher rent upon highly cultivated land to a certain extent?—Yes, to a certain extent.

12342. Then I want to ask you this: Is not that renting tenants' improvements?—Yes.

12343. It is?—Yes; but I think I should be allowed to say that I do not consider good cultivation of the soil an "improvement"; I think it is only what ought to be done. That is not in any sense what can be called, I think, an "improvement."

12344. That is rather a contradiction of your first answer. First, you say it is a tenant's improvement, now you say it is not a tenant's improvement. It must be either one or the other?—No; I have asked leave to explain what I consider an "improvement." I say the good cultivation of the surface of the soil has, in my opinion, a certain effect upon the Sub-Commissioners' minds when valuing holdings.

12345. And eventually they put higher rents on?—And, in the other way, the bad cultivation has also a contrary effect.

12346. Then I understand that those improvements in cultivation are done by the tenant, but that they are rented, and that practically it is no loss to the landlord if the land stays in its usual moderately cultivated state; it is no hardship upon him?—It ought not to be.

12347. I have

Mr. *Fuller*—continued.

12347. I have only one more question to ask you. Would you just correct me as to whether I am right, in your judgment, as to what is rack-renting? Rack-renting means, as I understand, putting a rent upon buildings that the tenant has constructed, which would not be taken into consideration in a fair rent?—Putting rent upon buildings that a tenant has constructed?

12348. Yes?—No, I do not call that "rack-renting." That is not what is called rack-renting in the ordinary sense of the term.

12349. What do you mean, then, by rack-renting? I want to know?—I believe the original definition of the term "rack-renting" meant the highest letting value of land in the open market; that is what is called "rack-renting."

12350. What does that mean? What are the elements which make up that full value? Would it not be the value of the buildings?—The competition value in the open market of whatever is the property of the landlord; the highest possible rent he can obtain in the open market.

42351. Only the property of the landlord?—Only the property of the landlord, of course.

12352. Rack-renting does not constitute renting anything that belongs to a tenant?—No; certainly not.

12353. Very good; then if the tenant had drained the land and made it more valuable by a pound an acre, and you put the pound an acre upon it, that would not be rack-renting?—No; if tenants' improvements in the way of buildings or other improvements that he had laid out money for, that he was not remunerated for, were to be rented, I should call that unjust; I should not call it "rack-renting."

12354. I am not talking about the justice of the thing, but about what is the meaning in your mind of "rack-renting." You would not consider it rack-renting if a pound an acre was put upon land that was worthless before it was brought to the value of one pound by the tenants' drainage?—Not if his expenditure was compensated for.

Mr. *W. Kenny.*

12355. Do you regard "rack-renting" and "full agricultural rent" as synonymous?—Yes.

12356. It is a phrase made use of in the Redemption of Rent Act: "And such person holds his land at a rent which the Land Commission considers, having regard to the renewal fines (if any), and all the circumstances of the case, holding, and district, to be a full agricultural rent"?—A "full agricultnral rent"; that is what I believe to be the true meaning of the word; but it has of late years been applied to over-rented farms; farms considered over rented have been called rack-rented farms.

12357. In the leading book on this subject it is said that "in practice it appears to be considered equivalent to the actual letting value of the premises at the time of the application, supposing they were in the possession of the lessor, freed from any rights as to improvements or tenant-right on the part of the lessee"?—That is what I understand as the true definition of "rack-renting."

Mr. *Fuller.*

12358. I want to know what you consider to be the tenant's interest, because we have been told here that very often the tenant's interest is as valuable as the landlord's interest in the holding; would it not include the value of the buildings?—If they were his property, yes.

12359. Would that include all reclamation works?—No, not all reclamation works.

12360. Only those that would be proved?—Only those that would be proved by him that he had not been compensated for.

12361. How would you consider that he ought to be compensated?—By a fair return for the money that he had expended.

12362. Supposing he was not able to prove that he had done it, or that his predecessor had done it, but that it was a fact that it had been done by some predecessor of his, would you consider that a part of his interest, or would it fall to the the interest of the landlord?—It would depend upon the nature of the improvement. If it was an improvement that it was evident had been effected a long time previous, and that he had enjoyed the full return for it, I should consider that that was his interest in it; I should consider that he had been compensated for his outlay, and I would not consider that that was part of what he had to sell.

12363. Is your judgment in that respect guided by any law, or is it only a pious opinion of your own?—It is my own opinion, and as far as I can gather, I think it is the opinion of the Commissioners.

12364. Do you consider the state of the cultivation of the holding, good or bad? Suppose it is very good, do you consider that as part of the tenant's interest?—Yes.

12365. And his stock-in-trade?—His stock-in-trade, of course.

12366. Do you take as of any value his right of staying there without being disturbed; his occupation right?—Yes, certainly, his tenant right.

12367. Is there anything else that you consider part of the elements of the tenant's interest?—I think you have enumerated all; his property in all his improvements, his occupation or tenant right, and the condition of the farm.

Mr. *Hayes Fisher.*

12368. You stated that at the end of the statutory term you would be in favour of an automatic revision according to the rise or fall in prices, but that you had not made that the basis of your own practice in revising rent owing to difficulties. Are you aware that in the conclusions of the Cowper Commission that is Sir James Caird's theory?—Yes.

12369. And did not Sir James Caird and those who signed that report afterwards discover that that was impracticable?—I really do not know. I remember Sir James Caird asking myself the question. He asked me if I had thought it out, and I said I had not at that time.

12370. Do you think there would be great difficulty in such a system?—I think there would be difficulties, but I do not think there would be insuperable difficulties.

12371. But supposing there were insuperable difficulties, and that such a system was impracticable

Mr. *Hayes Fisher*—continued.

ticable then, what would be your opinion as to the statutory period?—I think it should be the same as at present.

12372. Fifteen years?—Fifteen years.

12373. You would not be in favour of any shorter period?—No.

12374. Have you, in your experience, come across any cases where the tenant, during the last year or two, prior to fixing a fair rent, has deteriorated his property?—Not wantonly.

12375. Do you think, in case a revision took place at short periods, there would be any risk of that to the landlords?—I think it would be a temptation.

12376. You say the good appearance or the bad appearance of land undoubtedly operates on the mind of the valuer at the time of fixing the fair rent?—I think so.

12377. Supposing land was from neglect, either as regards drains, or over-cropping, or any other other cause, in a bad state of cultivation, during the last year or two of the first period, would the result of that be the fixing of a lower rent upon that land, in your opinion?—I believe it would.

12378. That, of course, would be prejudicial to the landlord; he would be a loser by it?—Yes.

12379. Have you considered the question of short periods of revision in connection with the desire on the part of tenants to purchase?—No.

12380. I will put this question to you. Supposing that the Legislature were to fix the period of revision at seven years or five years, do you think that that would retard the desire on the part of the tenants to purchase their holdings?—I think it very probably would.

12381. That the fact that they would come into Court and get a new fair rent every five or seven years, would deter them from purchasing under the Purchase Acts?—I think it would; especially if there was a downward tendency in prices.

Mr. *Carson*.

12382. With reference to an automatic fixing of the rents, is there anything that affects the rents except the falls in prices of cattle, and of farm produce?—That affects the fall of rents?

12383. The rise and fall of rents?—When once a rent has been fixed and all the circumstances taken into full account and consideration, both the prices at the time, and the tenant's improvements, or the landlord's improvements, and all the circumstances connected with the case, at the time that that has all been fully gone into and fairly decided, then I think that should be taken as a standard; and I do not know what else could effect the conditions of the rent.

12384. And that, of course, would be easily ascertained in each particular district?—In my opinion it would; but I must ask to be allowed to say that that is my own individual opinion.

12385. That is all you are asked for?—I am aware that many of my friends do not agree with me in this, and I wish to say it is only my own private opinion that it is the fairest method.

12386. We have been told by the Sub-Commissioners that the question of competition for land does not enter into the calculation at all. Have you had any experience of sales after fair

Mr. Carson—continued.

rents were fixed?—Yes, I have. I gave a couple of instances yesterday from memory, and I could give one or two more to-day, but I did not come from home direct, I only got a telegram to come and am not prepared with any documents except one which I have been requested to hand in; I do not know whether I may be permitted to do it, but I have been requested, as the President of the Land Agents' Association, to hand in this document, which gives a return of sales. (*The document was handed in.*)

12387. I suppose I may take it, putting it generally, that even in cases where the rents are substantially reduced, the tenants get substantial interests for their holdings? — Very large interests.

12388. You have had a good deal of experience, can you tell us what the costs of these hearings come to, to the landlord; what does it take in an ordinary case, from start to finish, on an average, to fix a fair rent?—Do you mean to the landlords?

12389. Yes?—In the Sub-Commission Court?

12390. No, I take it from start to finish, or you may take it your way if you prefer it?—Of course you know there is a statutory scale, and it depends upon the size of the holding as to the solicitor's fee.

12391. But generally (you have had to pay a good many of these bills) for valuers, solicitors, counsel or whoever is employed, your own time or expenses in going there, altogether, could you give me any average?—I should think the average cost would be from 6*l.* to 8*l.* a case.

12392. From 6*l.* to 8*l.* a case?—Yes.

12393. That would be alone in the Sub-Commission Court?—That would be in the Sub-Commission Court alone.

12394. Then, if you appeal, does it take as much more?—Yes, quite as much more.

12395. Then, where there is an appeal, in each case it costs the landlord upon the average 12*l.* to 16*l.*?—I should think it would.

12396. And are the expenses much the same in small cases as in large cases?—No, they are not the same.

12397. You take this as an average?—I take this as an average. You know I am not prepared fully to answer that question, it would be very easy to answer it very accurately with a little time; but I certainly say that if there was an appeal, any case under 10*l.* would be a low average.

12398. Have you had any experience of the working of the rules under the Land Acts in which rents were to be fixed by arbitration?—No.

12399. That has not come under your notice at all?—No; I think it has been very little acted on.

12400. Have you ever tried yourself to work it in that way?—No, I have not; and I have not been asked by any tenant to make use of it.

12401. But you have never suggested it?—No, never.

12402. Did you know of the provision which enables a valuer to be sent down?—Oh, yes.

12403. Do you think that the rents could be fixed in that way?—I do not like it; I do not approve of it.

12404. What

Mr. *Carson*—continued.

12404. What is your objection?—I do not like one valuer coming upon the land; I like the case being heard through the courts, and tenants saying what they have to say there, and being answered in Court.

12405. You like the hearing in open Court?—I like hearing in open Court.

12406. Even at a cost of 10*l.* to 16*l.*?—Even so.

12407. You think it is better?—I do; I think the alteration of a rent and the fixing of a rent for a period of 15 years is too serious a thing to be dealt with in any other way except by the properly constituted tribunal.

12408. You do not apply that evidence to cases where rents have been already fixed?—I do.

12409. You draw no distinction?—No.

12410. Have you had any complaints made to you by the tenants of the expense caused to them by the fixing of the rent?—Yes, I have often heard them speak of it as a grievance.

12411. Have they ever told you what it costs them on the average?—Yes, they have frequently told me. Many of them have told me that. On a moderately-rented farm a man has often said to me: "I cannot get through the Court for less than 3*l.*

12412. They have spoken of that as being a grievance?—Yes, they have spoken of that in cases where tenants have asked me to settle with them, and when I have objected to settling out of Court, they have said it would cost 3*l.*, or sometimes more.

12413. In the fixing of the fair rent, have you found at all any distinction made by the Commissioners where the rent has been made an old rent, and unaltered for years, or have they just gone the same course as more recent rents?—I do not think they have made any distinction.

12414. As far as you can see?—As far as I can see of them, the one thing they do is to value the land as they see it before them.

12415. About how many cases have you yourself been in Court in?—I think I have had to deal with (as well as I can remember roughly) about 1,500 agricultural holdings, and I should think that about 800 or perhaps a thousand of those have been through the courts.

12416. Up to a thousand have been through the courts?—Yes. I am not giving that from any figures that I have obtained, because I have not been able to obtain them since I was summoned here.

12417. Are any of them settled estates?—Yes, they are.

12418. Has any point in any of those thousand cases that you have had (or about a thousand), been raised upon the fact that the estate was settled. Do you raise that objection?—No; I have been told it is of no use.

12419. You have never raised it?—No, I have never raised it.

12420. Are there mortgages on any of those estates?—Yes.

12421. Being Irish estates, I should anticipate there would be. Have you ever raised the point for the mortgagee to put the tenant out if there was a mortgage on the estate?—No, I never have.

Mr. *Carson*—continued.

12422. Have many cases been dismissed on the properties that came into court that you were interested in?—Very few.

12423. About how many?—Well, there have been probably six or eight for town parks as town parks, and half a-dozen as residential holdings.

12424. That is on the ground that they were not agricultural holdings?—On the ground that they were not agricultural holdings; and a few (perhaps the same number) as grazing holdings.

12425. As grazing holdings, let to be used solely or mainly for the purposes of pasture?—Yes.

12426. Have these been the only points that you can remember on which cases have been dismissed?—Yes.

Mr. *Sexton.*

12427. Have there been none for sub-letting?—Yes; there was one case of sub-letting quite recently. One of the landlords for whom I act also happens to be a tenant; he went into Court, and his case was dismissed, because there were three small holdings by men holding, I think in the aggregate, 10 acres out of 50 or 60 acres; they had been originally labourers, and became tenants; that holding was dismissed. That is the only case that I have had anything to do with where there was any sub-letting.

12428. Have you examined this Return?—I have only looked over it.

12429. I see it is certified by Mr. Willis, the Secretary?—Yes, he is the Secretary to the Irish Landowners' Convention.

12430. You are the President, I understand?—I am the President of the Land Agents' Association, and I am also a Member of the Executive Committee of the Landowners' Association or Convention.

12431. This purports to be an exhaustive return of all sales of tenants' interest in Ireland since the 1st January 1882?—Of all that have been obtained.

12432. I say it purports to be; that is the question I put; it purports to be?—Of all that have been obtained from the landlords or agents from whom the information was sought.

12433. It is entitled, a "Table of sales of tenants' interests in Ireland since 1st January 1882"?—Yes; but not of all the sales in Ireland.

12434. The title is not quite candid then; there may have been many sales not included here?—Indeed there may have been.

Mr. *T. W. Russell.*

12435. You would say, "there has been," not "there may have been"?—There may have been.

12436. You know perfectly well that that does not represent the sales of all tenant rights in Ireland?—I am not saying that it does.

Mr. *Sexton.*

12437. Do you know or do you not?—No, I do not. As a matter of fact that document was only handed to me.

12438. You do not know whether it is or not, do you?—Whether it is what?

Mr. *Sexton*—continued.

12439. Whether it is an exhaustive Return?—I do not believe it is.

12440. But you do not know?—I do not believe it is an exhaustive Return.

12441. Now what machinery have the Landlord's Convention for making this Return?—Perhaps the secretary who prepared that Return might furnish that information; he is at hand, and perhaps you would be good enough to ask him.

12442. I think it would have been more convenient if he had put in the document. Is he here?—Yes.

12443. I notice here in the first place that two-thirds of all the sales take place in Ulster. I suppose that is in consequence of the existence of free sale there?—I do not know anything about Ulster, or about the practice in Ulster at all.

12444. You have looked at the Return, at any rate?—I just looked at it as it was handed to me; I was asked to hand it in, and I did so, simply as a member of the Executive Committee who prepared it.

12445. I notice that the average number of years' purchase in cases of "non-judicial rent" in Ulster is 15½; "judicial rents," 17·3; that the average number of years' purchase paid in the cases of "non-judicial and judicial rents together in Ulster is 16·8. In Leinster it is only six years' purchase and in Munster and Connaught 10 years; that is to say, the tenant gets six in Leinster, 10 in Connaught and Munster, and 16 in Ulster. You say you would maintain the right of pre-emption?—Yes.

12446. Notwithstanding that difference, can you suggest any equitable reason why the tenant in Ulster should be allowed to sell his interest in his holding for 17 years' purchase, and the tenant in Leinster only for six?—I have already said that I have no experience about Ulster, but I believe that a tenant-right has always existed in Ulster, and that the tenants' improvements in Ulster are very much more valuable than they are out of it. The tenant in Ulster has expended a much larger amount of capital on his holding than the tenants out of Ulster.

12447. The improvements everywhere in Ireland are made by the tenant, are they not?—To a certain extent; the buildings, as a rule, are made by the tenant.

12448. He makes them out of Ulster just as usual as he does in it, does he not?—It is a very different class of improvement.

12449. If the right of pre-emption is maintained, the landlord, after buying the tenant's interest, in Leinster, say, for six years' purchase of the rent, can then go into the market the next day and sell it, as you have told us, for 20, or even more than 20, years' purchase of the rent?—I have never known a pre-emption to be fixed at six years' purchase only.

12450. Your Return shows it?—The pre-emption?

12451. The sale?—The specified value that would be.

12452. This is the sale value. Are these free sales, or what kind of sales are these given here for Leinster? Are they sales in the market?—I do not know whether they are or not. Some of them probably are sales in the market, and some of them private sales.

12453. At any rate, the tenant gets 17 years' purchase of his rent in Ulster. What does he get from the landlord under the right of pre-emption; how much does he annually get?—Out of Ulster?

12454. Out of Ulster, yes?—In Leinster?

12455. Anywhere out of Ulster?—The cases in which the right of pre-emption that I am acquainted with have been fixed are very few indeed.

12456. Very few?—Very few. I think I have only known the pre-emption to be claimed or to be asked for in half-a-dozen cases, perhaps, altogether.

12457. We know here, as a matter of law and as a matter of evidence, that the amount paid by the incoming tenant to the outgoing tenant, for the tenant's interest does not affect the amount of the fair rent; how, then, is the landlord prejudiced by free sale?—I will just give you one instance: I think I mentioned a case yesterday of a tenant who wanted to purchase another tenant's interest; the tenant who wanted to buy the outgoing tenant's interest asked me to exercise the right of pre-emption and to claim it for him in order that he might not have to pay a fabulous price in the market. I told him I could not do it, that I did not see my way to do it.

12458. Of course if you had done it you could then charge the incoming man the full market price?—Yes, probably I could.

12459. You could if you would?—It was an understood thing that I was not to.

12460. Is it equitable that whilst in Ulster a man can get 17 years' purchase, in any other part of Ireland he must sell at a fraction of the market value; and that the landlord then may sell in the market and pocket the difference, that is, acquire so much of the tenant's property?—Out of Ulster the tenants that I am acquainted with, hardly any of them have paid anything for their holding when coming into it.

12461. It does not matter; they have a legal property which they can sell if they are allowed; Parliament has given them a property which they can sell if they are allowed at a higher price than what is called the specified value, or true value?—Let me give you another instance: Another tenant was extremely anxious to purchase, and he was willing to give as much as 20 years' purchase of the tenant's interest; another tenant of the estate: there were two small holdings adjoining. One man wanted to sell and go, and this small tenant was very anxious to enlarge his holding, but it was sold at a great deal more than he was willing to give. It was sold at a fabulous price; I do not like to quote the figures because I have not got them here.

12462. We have heard "40 years" quoted here?—The tenant that came in had not the money of his own, he borrowed that money, and when the interest of that was added to his rent he was not able to pay back the money; but after staying in the farm for two or three years he ran it out; took all he could out of it and was "broke," and the holding was very much deteriorated; whereas if the other tenant (the adjoining tenant) had got it, he was perfectly willing

Mr. *Sexton*—continued.

willing to fix a fair price; and my experience is that rents I have seen a pre-emption price fixed for, have been fixed upon evidence taken of what other farms are selling at in the market, and very little has been taken off.

12463. How many years' purchase have they given in those cases?—Of course a good deal depends upon what is the soil upon the farm; what buildings there are, and what state the farm is in; it varies from 12 to 20 years' purchase.

12464. We had no such evidence hitherto; the evidence before you came was five to seven years' purchase for specified value or true value?—As fixed by the Commissioners?

12465. Yes?—I did not quite understand.

12466. That is what I want your views upon?—I misunderstand your question; you see my experience about it is very small.

12467. Surely a man of your ability and good memory can give us a figure of some case or other that you have known?—As I say, I do not think that there were more than half-a-dozen cases where landlords have applied for the right of pre-emption; I only remember two or three cases being fixed, and I know the evidence that was taken.

12468. It is very hard to bring you to the point. Will you give me the number of years' purchase in any case where it was fixed in that way?—Yes, I can give you one; this is the case of a tenant of my own. I applied for the right of pre-emption; I applied to have the specified value fixed, and it was fixed. His rent was 46*l.* a year, and the specified value was fixed at 500*l.*

12469. £. 46 a year?—Yes.

12470. That is about 10 or 11 years' purchase?—Yes. That is the only case that I can remember of actual figures.

12471. The right of pre-emption affords no security against an excessive price, because the landlord, having bought at the lower price, can sell at the higher?—Of course he can if he wishes.

12472. I think you have said you are against throwing open sub-letting, that was your answer, that you were against throwing it open?—Yes.

12473. You are aware, of course, that under the law, once a statutory term is fixed, sub-letting is a breach of the statutory condition?—Yes.

12474. And that the tenant incurs eviction and loss of all his rights if he does it?—Yes.

12475. Does it not occur to you then that the fixing of fair rent would be one very effective way of stopping or limiting sub-letting?—Yes, I think it would if that clause is continued.

12476. Quite so. Therefore now the question is simply this; Whether because there is a sub-letting now existing, a man should be excluded from a fair rent or not?—My answer yesterday referred a great deal more to the future than to past sub-lettings. I think where sub-letting has taken place, and there has been no protest on the part of the landlord that the tenant should not be excluded.

12477. I think that is a very fair answer. Taking the provision in the Act of 1881 against future sub-letting, would you be disposed to erect a bar against a fair rent in consequence of a sub-letting now existing?—I would not, except under very extreme circumstances, and in extreme cases.

12478. Of course sub-letting is a very different thing now to what it was when the population of Ireland was double what it is at the present time?—Yes, I do not think there is the same danger in sub-letting.

12479. No, the danger rather is that the labour market will not be filled in Ireland because of the emigration from it?—Possibly.

12480. As to town parks, you said that it would be a misfortune to turn them (I think that was your phrase) into agricultural holdings?—Yes.

12481. Some of them are agricultural holdings now?—Town parks?

12482. Yes; used as such?—Well, they can only be used partly as agricultural holdings if they are town parks; one of the elements is that the holding must be used in connection with a house in the town.

12483. But it may be applied to an agricultural or pastoral use nevertheless, and is often?—My experience is that it is absolutely necessary to prove, in order to maintain it as a town park, that it is used more or less in connection with a house in the town.

12484. But the tenant may raise agricultural produce or pastoral produce for a house in the town, just as he may for a house in the country?—Yes.

12485. Would you shut out such a town park as that?—Yes.

12486. You would?—I would shut out town parks. I think that one reason for shutting them out is it would render it very much more difficult to accommodate the inhabitants of a town if they were altered into agricultural holdings.

12487. Whether the present law of town parks is maintained or not, only a certain number of the inhabitants of the town can have the land about it?—A larger number can have the town parks if the owner of the town has control over them, or the owner of the town parks, he can accommodate a much greater number.

12488. That depends upon the size of the holding now, does it not?—He can divide the holdings, he can give a field of five acres to a man; he can divide them in proportion or according to the wants of the people. A great many persons are quite satisfied, living in a town, to have a field of five acres. I know many that have a field of only two acres, and are very glad to have it.

12489. In defending the present system of town parks, are you thinking of the interest of the towns or of the interest of the landlord?—Well, I think of both.

12490. Do they hold a perfectly equal place in your mind?—Of course, I suppose, I will be assumed to be partial, being a land agent; but I do really believe that it would be a very disastrous thing for the towns if the fields round about them were turned into agricultural holdings; and I say that from my own personal knowledge and experience.

12491. You think it is expedient that around every

Mr. *Sexton*—continued.

every town, village, or hamlet in Ireland, where the people want any land, there should be a zone within which the principle of fair rent should not penetrate?—I do not go so far as that. I would say every town that there is a prospect of improving; towns that there is a prospect of increasing; or every place where there is a certain number of inhabitants who cannot now get any accommodation.

12492. You think the town's people holding the land are better off at such rent as you choose to fix, and without any security of tenure?—I do.

12493. Better than they would be if they had fair rents fixed and had security of tenure?—I think the land would fall into the hands of too few in that case. I think the general public would not be accommodated.

12494. They are accommodated now, are they not?—Indeed they are not; they are not half accommodated.

12495. What are the landlords doing to improve the accommodation? Are they cutting up the town parks?—They are supplying them by degrees as they can, but it is not a very easy thing always to take away fields from those that have them in possession; you must bide your time.

12496. As a practical man, now, would not you say that the town parks at present follow the general law of supply and demand, and meet the wants of the inhabitants, as they are now?—Certainly they would, if all the land was absolutely in the landlords' own hands, but where it is not so he must bide his time for getting it. If a man has 10 acres, and there is a great demand for town parks, the landlord does not like to go immediately and take away five acres from him; he must take his opportunity; but if they are made into agricultural holdings there is no opportunity afforded of getting them.

12497. But, as a general matter, would not you say that the lettings now correspond to the need?—No, I do not think so; I think the need is greater than the supply.

12498. And you think that if the town park is used, as a farm might be used, it would be still expedient not to fix a fair rent upon it?—I do.

12499. You maintain the Court of Appeal, I understand?—Yes.

12500. For value?—Yes.

12501. The course of this system in Ireland is that the tenant serves the originating notice?—Yes.

12502. And the landlord takes the Appeal?—Sometimes.

12503. I am speaking of the general rule; what is the general rule?—In the majority of cases that is so.

12504. The great majority I should think. What is the average cost of the hearing in the Court below; the first Court?—Do you mean to the tenant or to the landlord?

12505. To either side?—I have stated that it depends to a certain extent upon the size of the farm. There is a larger statutory fee to a solicitor for a farm of a certain size and valuation.

12506. What is the cost of a hearing to landlord and tenant in the Court below?—It is less to the tenant than it is to the landlord.

Mr. *Sexton*—continued.

12507. How much is it in the usual ordinary case. In this question that I put to you I simply want a general answer to give an idea of the course of things?—I think I have already stated that I think the average cost to a landlord of the hearing of a case in the Sub-Commission Court would be 6*l.*, or 7*l.*, or 8*l.*, or something in that way.

12508. On the hearing of a case in the Sub-Commission Court?—Yes.

12509. How much?—£6 to 7*l.*

12510. Now an appeal; what does that generally cost?—That varies very much. It really depends upon how long the witnesses are kept away from home. Most of the appeals, or many of the appeals, in King's County, have been heard in Dublin.

12511. And the people have to travel to and fro?—They have.

12512. And to live and wait in Dublin?—Yes.

12513. Is not the cost of that tremendous?—That is what happened in the earlier stage. The last appeals for the Birr district were heard in the town there, and I think latterly that the Head Commission hear cases in the country towns more frequently than they used to.

12514. If the tenant brings the appeal, whatever happens he never gets his costs?—Indeed he does.

12515. I do not think you are aware of the general Rule (page 585 of Cherry); have you examined the Rules of the Commission?—No; I do not know that.

12516. When the tenant appeals: If the judicial rent be affirmed, the landlord is then entitled to costs; if the judicial rent be increased, the landlord is entitled to costs; if the judicial rent be reduced (that is the only other possible alternative), each party abides his own costs; so that the tenant never gets his costs?—All I can say is that I have paid tenant's costs.

12517. It must have been a very exceptional case?—I can furnish the bills. I have paid tenant's costs.

12518. In what cases? Had they appealed?—The tenant had appealed.

12519. And what happened?—The one I just have in my mind now was a case of Coffee (tenant); Waller (landlord). The tenant appealed. The Sub-Commission dismissed the tenant's application to have a fair rent fixed on the holding. It was held to be a residential holding; the Head Commission reversed that, and sent it back to have a fair rent fixed, and I had to pay the costs of the Appeal.

12520. There was a point of law in that case?—There was a point of law.

12521. It was not an appeal merely on value?—No.

12522. Quite so?—You said there was no case in which costs were paid by the landlord.

12523. I was thinking of fair rent appeals; there is no fair rent case in which a tenant appeals and receives his costs. What has been your experience of the usual result of appeals; is it that the rent below is confirmed?—It would be very difficult to state what is the usual result, because the results vary considerably.

12524. The

Mr. *Sexton*—continued.

12524. The evidence we have of that is that the general result is the confirmation of the rent below?—I dare say the whole thing would tot up and make that the result.

12525. It is not totting up; but taking individual cases, in the great majority the rents below have been confirmed, and when altered, the alteration is not great, as a rule?—As a rule, the alteration is not great on either side.

12526. This appeal is an appeal from two agricultural experts, who hear the evidence, to two others who do not, and who have to take the evidence as to improvement given in the Court below?—Yes; but then they have the benefit of other experts, do not you see?

12527. Yes, but still what I say I think remains true; they do not hear the evidence, and they have to accept the finding in the Court below upon the improvements?—It is generally the case that the whole question of improvements is gone into on a re-hearing.

12528. It is gone into on a re-hearing; it is heard by men who do not see the farm, and the men who do see the farm have made their valuation before the evidence is heard?—That is true.

12529. That seems to qualify the value of the appeal. Now you said that at one time you made a great many agreements out of Court, but that lately you have given them up?—Yes.

12530. What used to happen; did the tenants come to you?—Always.

12531. Did they suggest what reduction ought to be given?—Yes.

12532. Your view, I should say, prevailed then as a rule?—No, not always; we generally made a bargain.

12533. Why did you give up that system?—Well, I found, no matter what was done, that the tenant always seemed afterwards to think he had conferred a compliment upon one by settling out of Court, and I did not like it. I thought it was much fairer that he should say all he had to say before a proper tribunal.

12534. Now I draw your attention to the fact that the reductions all over Ireland (including agreements) for the whole time since the Land Act was passed are just about 21 per cent.; and in King's County the reduction given upon agreements filed with the Land Commission has been 16 per cent., upon the agreements filed with the Civil Bill Court only 14 per cent.; so that the one is 5 per cent. and the other 7 per cent. less than the average. Was not that worth trying for. I mean if you could get agreements at that rate?—Would you kindly give me those again: What was the difference between those settled in Court and out of Court?

12535. The average over all Ireland?—No, for King's County; let us take King's County: What was the difference between those settled in Court and out of Court in King's County?

12536. It varies in the Sub-Commission Courts from 18 to 22½ per cent.; it varies in the Civil Bill Courts also from 18 to 22½; and the average of the agreements filed in the Land Commission Court was 16 per cent., and those filed in the Civil Bill Court were 14 per cent.?—They are not great.

12537. So you would have, apparently, done very well to continue the system of agreements out of court if you could?—I think both sides were quite satisfied with the arrangement at the time, and I should have gone on with it, if it had not been made use of in the way I say.

12538. What I fail to understand is, why the system, so profitable to the landlord, should have been voluntarily abandoned?—You can understand that a "profitable" system is sometimes uncomfortable when made use of in the way I say. You cannot get rid of the feeling created by the fact that the tenant, at all events, says afterwards: if anything happens, if he is in arrear of rent or not able to pay his rent: "I did not go into the Land Court; I left it all to yourself," or, "I settled with you easily, and put you to no expense;" that kind of thing is constantly said to us; therefore I said: "Well, I think it is much better that we should not have this repeated."

12539. Of course the figures I have cited suggest that such complaints would be made. Perhaps the tenants as well as yourself had got enough of the agreements?—Perhaps.

12549. Now about the statutory term; do you think the rents fixed between 1882, 1885, and 1886, are too high now?—I cannot say that; I am sure they are being fixed much lower now than they were then.

12541. The evidence is that there has been a steady decline in prices, and an increase in labour, and we know, as a matter of fact, that the reductions in the Land Courts in 1885 were only 18 per cent., and that they became 31 per cent. in 1887?—Yes.

12542. That seems to indicate that the rents fixed in the early years are above what would now be fixed?—Certainly, if fixed by the same people.

12543. Do you think it is just to allow those people to go on paying those rents to the end of the 15 years?—Yes.

12544. Simply upon the hard basis of contract?—They did the best they could for themselves for 15 years.

12545. And you think that whatever happens that must be squeezed out of them for 15 years?—I do not admit that the rents fixed in those early days were not too low.

12546. "Not too low?"—My opinion is, that those early rents were too low.

12547. Do you mean that although the Land Commission took off 18 per cent. on the average after 1885, and 31 per cent. in 1887, the earlier rents are not too high now?—According to that scale, of course they would be too high now.

12548. Well, I put it to you as an experienced kind of man, conversant with these Courts, that test, and I suggest to you the inference that the rents then fixed would be fixed lower now if those cases came into Court?—Certainly, they would be fixed lower now by the same people.

12549. But if the statutory term is not shortened, they must go on paying those rents to the end of the 15 years?—Yes.

12550. I thought you said (in answer to Mr. Hayes Fisher) that if the statutory term was shortened, it might deter tenants from purchasing; what did you mean by that?—In the question

Mr. *Sexton*—continued.

that was put to me by Mr. Fisher; I do not remember the point.

Mr. *Hayes Fisher.*

12551. The question I asked you was whether, if the Legislature fixed a very short period for the revision of rents, and the tenants knew that their rents were to be revised at such short periods, it might not deter them from purchasing?—Yes.

Mr. *Sexton.*

12552. What did you mean by that?—I meant that they would be satisfied, probably, to go on paying the judicial rents. If they thought there was a probability of a fall in prices (I said a good deal would depend upon the fall of prices) and they thought they would get lower rents, they would be indifferent to purchasing.

12553. That would be a pure speculation as to the future?—It would.

12554. Your answer also appears to suggest, it does at any rate to me, that if they felt their rents to be unfair, and had a long term to run, they might purchase to escape the unfair rents; whilst if they had a short term, they might wait for the revision?—That is possible, too.

12555. I understood from you that you were agent over 10 estates?—A larger number than that; about 20, I think, large and small.

12556. Twenty estates?—Yes.

12557. All in King's County?—On, no.

12558. In different places?—In different places.

12559. I suppose your estates cover a good part of King's County?—No, indeed.

12560. You have jurisdiction over 1,500 tenants?—I think so; I think that is about the number.

12561. And a thousand of them have been through the Courts?—Something under a thousand; I really could not say the exact number, but I think about that number. I think, certainly, more than half have been through the Courts.

12562. You told us that the reductions on the estate of the late Lord Bloomfield had been about 10 per cent. on the average?—Yes, the earlier reductions were.

12563. Was that the estate on which the least reductions were given?—I think so; the least average.

12564. What was the estate on which the highest was given, of those you work connected with?—The average reductions on the big estates which I am connected with was about 15 per cent.

12565. And what was the estate in which the reductions came to the maximum taken as a whole?—I think a small estate, an estate belonging to Mr. Banon in the King's County, where the lands were subject to a drainage charge.

12566. What was the average there?—I think the average there was 25 per cent.

12567. Are the tenants who have remained out lower rented than those that went in?—As a rule, yes.

12568. Lower rented?—Lower rented.

12569. Are they in arrear, any of them?—Very few.

Mr. *Sexton*—continued.

12570. Have they any rights of turbary or commonage that might be affected by going into Court?—No, I think not.

12571. Do they get abatements?—Yes.

12572. Oh, they do?—They do.

12573. What relation do the abatements bear to the reductions given to those that went in?—I think the rents of those tenants, with the abatements deducted, are lower than the others.

12574. Then your account of the matter would be, that two-thirds have gone in, and that the other third, taking into account the abatement that they receive, are in much the same position as those who have had their rents fixed, as far as rents are concerned?—As far as rents are concerned, I think they are rather better off.

12575. Have you many "future tenants" in your part of the country?—No.

12576. Not many?—Not many.

12577. You have some?—Very few.

12578. How did these "future tenancies" arise?—The "future tenancies" arise sometimes by the letting of a holding that has been in the landlord's hands.

12579. Then that tenant is subject to the old law before 1881 as to rent and eviction; the rent may be fixed by you, and you may evict?—Yes; when in the landlord's hands the landlord may, of course, let at his own rent.

12580. The future tenant is in that position?—He is.

12581. I understood you to say that you had very seldom resorted to dispossession of the tenant?—Yes, dispossession.

12582. Very seldom?—Yes.

12583. Is the resort to legal process frequent on the estates with which you are connected?—If tenants are in arrear they are subject to the usual legal process, but not without good reason.

12584. What is your rule as to the amount of arrear that would lead you to resort to legal proceedings?—Hardly ever for anything less than a year and a-half's rent.

12585. Not usually for a year?—No.

12586. Nor a year with the hanging gale?—No.

12587. But at every sessions almost you have some, I suppose, to process?—No.

12588. I understood you to say you might have 10 at a sessions?—Yes, but not at every sessions. At the majority of sessions we have none at all.

12589. I understand you have been connected with land nearly all your life?—Yes.

12590. Have you been valuing land all your life nearly?—Not as a professional valuer.

12591. When did you begin to value as a professional valuer?—I am not a professional valuer. I have never valued land for fees. I am not a professional valuer.

12592. I do not convey that. When did your valuing begin to be in practical operation with regard to rent?—When I first began agency business. I tried to make myself acquainted with the value of land since the time I was one-and-twenty or five-and-twenty.

12593. I understand

Mr. *Sexton*—continued.

12593. I understand your practice has been, as an agent, to value the farms yourself for the landlord?—Yes.

12594. When did you begin that?—After the passing of the Land Act.

12595. Of 1881?—Of 1881.

12596. Were you not an agent before the Land Act of 1881?—Yes.

12597. Well, before the Land Act of 1881, did you value for the landlord when a tenant was coming in; did you fix the rent?—When a tenant was coming in?

12598. Yes, or in case of increase of rent?—Yes, I inspected the farm for value.

12599. So, up to the passing of the Act of 1881, rents on the properties with which you were connected were fixed upon your valuation?—Any changes of rent that took place were, I cannot say "fixed upon my valuation," because my father was alive, and he arranged a great many of them himself. He was alive until 1879.

12600. So far as you acted up to the passing of the Act of 1881 when rents first became subject to public authority, the rents were, in practice, fixed upon your suggestions of value, upon your opinion?—My opinion was taken upon them.

12601. Has your system of valuing been always the same; you have not changed it because of any Act, have you?—No, it has been always based upon the same principles.

12602. How do you proceed: do you fix the rent per acre for the different classes of land on the farm?—I do.

12603. Necessarily, of course, you fix that with regard to your estimate of the value of the produce of the farm?—Yes.

12604. Then when you add up the acreable rental, that is your view of the proportion between the rent and the total produce?—Not necessarily.

12605. How do you qualify it?—In valuing a farm I know pretty well when I have examined the land what its producing powers are.

12606. That is, you estimate the produce?—I estimate how many barrels of corn a field is able to produce.

12607. Have you in your mind, as a matter of practice, any proportion between the rent and the value of the produce; we have had many figures given here, pasture two-thirds, mixed arable and tillage one-third, and so on: have you any fixed proportion in your mind, when fixing rents, between the amount of rent and the estimated amount of the produce?—I think the estimated amount of the produce, with that proportion, is about of equal value.

12608. What is that?—About one-third.

12609. What did you say yesterday?—I said one-third, I think.

Mr. *T. W. Russell.*

12610. You divided it into 12 parts, did not you?—That is another thing.

Mr. *Sexton.*

12611. That is another thing altogether; that is your new scheme of rents, is it not?—Yes, that is with regard to the sliding scale.

Mr. *Sexton*—continued.

12612. Do you check the acreable rent when valuing the farm by your estimate of the total produce?—I do. When I am giving evidence of that in the Land Courts I always do.

12613. That process of valuing; fixing the rent per acre with regard to the total value of the produce; has no regard to any individual tenant; it is the value of the farm?—Yes, but I always take into account that there is a tenant there in occupation.

12614. How does that affect the value of the produce?—Not the value of the produce; but I never put on as high a rate for a tenant in occupation as I would if the farm was in the landlord's hands.

12615. You take the value of the produce and fix about one-third as the rent?—Not always; not necessarily. I check that with the field-to-field valuation just as a matter of check. I put down so much per acre for every field on the farm as I go over it, and then I make up what I consider the farm is able to do.

12616. I quite understand; you estimate the total produce?—Then I assume that a tenant in occupation has a claim to have that farm for less than he would if it was in the landlord's hands, and I estimate that according to circumstances.

12617. How long have you been doing that?—Always.

12618. Before the Act of 1881?—Yes.

12619. Before the Act of 1870?—Yes.

12620. When the tenant had no legal interest in the holding?—Yes.

12621. You anticipated the benevolence of the law and made this allowance yourself?—I did not anticipate anything about the law, but I always thought the tenant in occupation should never be charged the full rent.

12622. I am very curious to know how it gets into your scheme of valuation. Does it affect the figure per acre when you are fixing the acreable rent?—It does; it always does in my mind.

12623. Will you illustrate that now. Suppose you were valuing two farms side by side, one vacant, and the other in the hands of a tenant, what effect would that occupation right have upon the rent per acre in respect of the two farms?—It is always present to my mind when I am valuing field by field, but when I make it up I, of course, exclude everything in the way of buildings or tenant's improvements (if he has made any), and I value the farm irrespective of those improvements; and when I am valuing the farm, if I consider that the full value of that farm is worth five and twenty shillings an acre, I would say: "Well, that would be the value of it if in the hands of the landlord; that special field, irrespective of the buildings, or anything else; that field there is worth five and twenty shillings an acre, but the tenant being in occupation of that farm, two and twenty or one and twenty shillings, would be enough to charge."

12624. Not a fixed proportion?—Not a fixed proportion.

12625. But a material proportion?—A material proportion. A good deal would depend, you know, upon how long the tenant had been there. If the tenant had got it out of the landlord's

Mr. *Sexton*—continued.

hands within a recent period, that would make a difference; but if it was an old tenant, or if the tenant had not got it at a recent period it would be "present" in the same way as with a tenant who has been long in occupation.

12626. But it always comes out at about one-third of the total produce?—I do not say that one-third of the produce is what I put on as the rent to charge the tenant in occupation. I say that is a fair check in arriving at a fair rent.

12627. What proportion would it be for the tenant in occupation?—That I would allow, do you mean?

12628. What proportion of the total produce would the rent be in his case?—I have never laid that down to an absolute scale.

12629. If there were no buildings on the farm, would the rent be one-third of the produce?—It would be the basis of it, there might be other circumstances to be taken into account.

12630. Where there are buildings, the rent would be one-third of the produce also?—Yes, to begin with.

12631. But if the buildings are the tenant's, you ignore them afterwards?—I do not charge those to the tenant.

12632. You have charged them already in the one-third of the produce?—The buildings?

12633. Yes?—No, I do not charge them in one-third of the produce.

12634. If one-third of the produce is a fair rent, the buildings are valued into that as well as the land; because buildings are part of the plant for realising that produce?—Yes, and I give the tenant credit for them.

12635. I do not see how you do. You charge one-third of the produce where there are no buildings, and his buildings are simply ignored, so that they are charged in the rent. What would you say is the usual value on the purchase of an ordinary 20-acre farm in your part of the country, an ordinary mixed dairy and tillage farm. What would you say is the annual value of the produce of that farm at present there?—Very much depends upon the way it is farmed.

12636. Ordinary good farming?—Ordinary good farming? Do you mean what the gross produce of that farm ought to be?

12637. Yes, just so?—Some would make it a great deal more than others; some tenants would make the produce more than others; but I should think the produce of that farm might be 90*l.* a year.

12638. Ninety pounds a year?—Yes, it might be.

12639. You said yesterday that two and a-half acres of barley on that farm would pay the rent?—Yes.

12640. What yield per acre of barley?—Sixteen barrels

12641. What price per barrel?—13*s.* or 14*s.*

12642. £10 an acre?—£10 an acre.

12643. £25 for the two and a-half acres?—Yes.

12644. That is nearer to one-fourth than one-third of the 90*l.*?—Two and a-half acres is not a fourth of the farm though.

12645. No; you put it very plausibly, as you do all your evidence. The two and a-half acres under barley would probably be the best two and a-half acres, would not they?—Probably.

12646. Very likely?—You mean the crop that would produce the most return, not the most valuable, decidedly.

12647. That is not the point I wanted to put to you. If you take an ordinary 20-acre farm in Ireland, and find two and a-half acres of barley on it, you will find those are the best two and a-half acres on the holding as a rule, will you not?—No.

12647*. They may not be good land to return that yield of barley?—No.

12648. What then?—Very fair, ordinary, middling land; if it is suited for barley, the pound an acre land may be the best growing barley-land at all. Light, sharp soil is the proper barley soil.

12649. A pound an acre land must be pretty good land?—A pound an acre land must be pretty good land; for an Irish acre.

12650. For an Irish acre it would not be bad even?—No, there is not a great deal of average land being fixed at much above that now.

12651. As a rule, does not an ordinary 20-acre farm through the country in Ireland contain a good deal of land of very little value?—An ordinary 20-acre farm will have more or less of a little "tail" to it.

12652. A third, perhaps?—No.

12653. What then?—Well, there is very little in the 20-acre farm; it is the large farms that have the "tails" to them.

12654. They all have a "tail," more or less?—No.

12655. As a rule?—Not at all; you may go for miles through the country and not get a farm with what is called a "tail" to it; if you are anywhere in the neighbourhood of bog-lands there will be.

12656. Then there is the cost of production; we are told that that means about one-third of the produce; that would represent seven more acres out of the 20 on the average?—The cost of production would represent what?

12657. Would represent seven acres out of the 20?—Indeed, I do not see that.

12658. The evidence before us here is one-third of the produce?—Do you think that a 20-acre farm that is occupied by a man that pays no labour bill will take the produce of seven acres to pay his labour? It is no such thing.

12659. I take the cost of production as including his wages there?—The man's own family will work that farm.

12660. There must be some allowance for wages?—There must be some allowance for wages.

12661. Where they do the labour themselves, they cannot live merely on the margin?—They can live on it very much better than if they have to pay the labour bill.

12662. Possibly, something better; but you must make the allowance?—You must allow what is fair for that.

12663. On the whole your two and a-half acres, which you have put, I must say, very skilfully, comes to very much the same thing in the long run as one-third of the gross produce. Now about

Mr. *Sexton*—continued.

about your new scheme of rent, you call it "automatic": Do you propose that there should be no Courts in connection with the new automatic scheme?—Yes, after the fair rents which have been once fixed.

12664. Yes, they have been fixed in most cases by the Courts?—By the Courts.

12665. How would you have it done?—It should be done by the official returns of the prices.

12666. Who would make up the returns?—The Land Commission, I should think.

12667. That is rather a delicate function, I should suppose?—I do not know; I think they are doing it very well at present.

12668. That is a highly contentious question?—I can only speak from my experience of the trouble taken to collect statistics in my neighbourhood. I know that the most experienced persons go into every fair and market collecting them.

12669. We have had evidence here, that the Sub-Commissioners pay not the least attention to them; they think them worthy of no attention?—Very likely.

12670. At any rate, you would allow the Land Commission in future to go through the elaborate and scientific process that you described yesterday upon that automatic fixing of rents?—No, I think that they should have nothing to do with it, except fixing the rents; there would be a great deal of foundation work cut out for them first.

12671. Remember the process you described to us; you would take the prices; not at the moment; but the average over some years?—Yes.

12672. Then you would attach an arbitrary valuation to each article and divide them into twelfths; "12" would be the total you would give; butter, two; something else one; and by that highly technical and arbitrary arrangement you would arrive at some figure in the end?—Yes; I do not know why you call it an "arbitrary arrangement"?

12673. Because a great deal, everything in the case of a particular farm, might depend upon the relative value given to one article or another?—Yes.

12674. Do not you see that the rents fixed in any such way, giving butter, meat, corn, and so forth, certain relative values in the total, might act very differently upon different farms according to the kind of produce?—They should be according to the produce of the district.

12675. But even in the district the proportion you might fix in your table for the different articles of produce might hit a particular farmer very hard?—It is quite possible it might do that; there is the difficulty.

12676. It might destroy him?—No, I do not think it possibly could destroy him; the proportions are too small and too much divided for each article, the proportion that would be given to the greater article would not be at all enough in any district to destroy him.

12677. It might make all the difference between a fair and an oppressive rent, according to the particular yield or use of his farm?—According to the use of the farm?

Mr. *Sexton*—continued.

12678. Yes?—I do not think the yield would have anything to do with it. It strikes me that the matter would be very much in the tenant's favour, because the greater amount that he could produce on his farm by his own skill and by his own capital in any way could not tell against him.

12679. Do you really suppose that a process of that kind, automatically fixing the rent of every farm in Ireland, could be settled upon a sheet of paper by any public department without provoking the fiercest contentions throughout the country?—I do; and I think, if you think over it, you will come pretty much to the same opinion in the end, if you work it out.

12680. I have thought of it very carefully, since you gave the evidence, and I do not think, for my part, that any department could do that so as to give satisfaction?—The Poor Law Union might be taken as an area; I do not stick to that altogether, because there may be too great differences of cultivation and of farming in a Poor Law Union. One might make it into certain electoral divisions and group it in that way.

12681. You might diminish the hardship there?—You might diminish the hardship and attain uniformity in that way. I am not at all certain that it would work very favourably for the landlords.

12682. I am thinking really of equity?—So am I.

12683. I am thinking of the particular farmer and the particular landlord. I want to see whether it would work out fairly, and I see no assurance that it would work out fairly, because I see plainly, according to the relative values you give in your amalgamation of the different articles of produce, that a particular farmer might be greatly favoured or greatly hurt; and I see, moreover, and I put this to you, that your scheme rests upon the assumption that all the rents now fixed are fair?—Yes, certainly; that there is a fair standard to start from, in which everything connected with both interests has been taken into consideration.

12684. And that the rents now fixed have accurately gauged the produce of each farm?—Yes.

12685. That would be essential?—Yes.

12686. Otherwise your scheme would produce injustice?—The producing power of each farm, certainly.

12687. The basis, then, of your scheme is, that it is founded upon the produce of an ordinary year?—I do not know whether really the Sub-Commissioners take that into account in fixing fair rents or not, but they ought to have taken it into account, I submit, for a period of seven years.

12688. Could they really; could any man do it?—It is difficult, I dare say.

12689. Suppose a bad year came; under your scheme the tenant would bear the loss of it?—Under my scheme he would have the power of calling for a revision every seven years.

12690. I am speaking of bad yield, failure of crop?—How would that affect the prices?

12691. It would not affect the prices if you had no crop to sell at any price. Do not you

Mr. *Sexton*—continued.

see that rents fixed on price would leave him liable to the same price as if he had had a good year?—Certainly.

Mr. *T. W. Russell.*

12692. You say that "yield" will not affect the price; does scarcity in any crop not send up the price of the crop?—Yes, it would have that effect, to a certain extent; but not any appreciable effect on the different products, or different commodities, to be taken into consideration. Now let me explain, if I may: Suppose we have a dry year (I am only speaking of the districts that I have anything to do with). A dry year is a good year for barley; it will make a good yield, and fetch a good price perhaps; it may be a bad year for oats; it may effect oats more; but there will still be a tolerably fair yield, and one's experience of those years, one with another, is, that the yield is very even.

Mr. *Sexton.*

12693. But of course you know that rents fixed on prices take no account of a bad year, otherwise than so far as a bad year may be supposed to be contained in the average?—Yes.

12694. Now suppose your scheme had been in operation in the year 1878, rent fixed on prices two or three years before, what effect would that have upon the tenants in 1878, 1879, and 1880; they would have been routed, "horse and foot," and destroyed?—In 1879?

12695. In 1878, 1879, and 1880, I submit to you?—No, I do not know that. I do not know that they would have been; at all events the scheme was not in operation then, but if it had been it would have been the average of seven years previously if fixed at that time, and they would have had seven years to go through in that part of Ireland.

12696. It would depend upon the correspondence of the second average to the first?—Yes; and if they were hard hit in the first they would benefit the next year.

12697. Just like a line of railway where the line would do very well for the level road; on a steep gradient it would be dangerous?—You see the products are so different; there is such a variety of them that you can hardly mention a year where the average would not come to pretty near the same thing.

12698. I understand that, as an ordinary rule, now; but I am speaking of depression and of calamity?—"Calamity?" That must be met only by circumstances when it arises.

12699. You observe also that your scheme takes no account of increases in the price of what the farmer may have to buy, or the cost of labour, the cost of production?—I do not think the cost of production is increasing at present.

12700. Well, we have it in evidence that labour is increasing somewhat, and that the diet of the labourers is now better than it was formerly?—Certainly.

12701. The cost is heavier?—Yes.

12702. If that went on, or anything a farmer has to buy outside your schedule of prices in rent increased, your scheme would become oppressive?—With free trade that is not very likely to happen.

Mr. *Sexton*—continued.

12703. You see it has been happening?—We have cheap bread always.

12704. On the whole, I think, you will admit that your scheme requires to be carefully reconsidered?—I do; it is a scheme that has to be well thought out; but still I do not think it ought to be passed over as impracticable.

12705. But you will not settle the income and the outlay of a nation by rule of three; you will have to apply yourself to it more closely. When did you begin to divide between landlord and tenant the balance of the letting value of the improvements after the tenant was paid for his outlay?—I have always considered that it was a thing that should be done; I have always taken it into account in valuations.

12706. Even before the tenant had any legal interest in his improvements?—Yes. One of the first things I was ever instructed in my father's office was that in any valuation one was making one should always take care that the tenant was recouped for his improvements.

12707. I suppose you are aware of the evidence that has been given here by the Sub-Commissioners: You know that three legal Sub-Commissioners have told us that after they have paid the tenant for his outlay the rest goes to the landlord by the law?—There is a difference of opinion about that, I think. I did not follow the evidence of the Sub-Commissioners closely in the papers. I was away from home and I was not able to do it; I did wherever I could.

12708. Do you value in all the Courts, for the Sub-Commission, for the County Court, and also for the appeals, or do you not?—I have very little to do with the County Courts.

12709. There is very little to do there?—Very little to do.

12710. Who is County Court Judge in your district?—The County Court Judge in King's County is Judge Curran; and in the County Tipperary it is Judge Anderson.

12711. You value, however, for the Sub-Commission?—Yes, occasionally. I cannot always do it.

12712. And you allow the tenant, in your valuation, first 5 per cent. on his outlay, and then one-half of the remainder where there is a surplus?—Where there is a surplus, yes.

12713. You said, however, a while ago, that you did not regard good cultivation as an improvement. Now I will call your attention to the Act of 1870, which says that the term "improvements" means "tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding." It would be very true that if there were tillages, manures and other serious matters, they ought to be regarded as improvements?—Yes, unexhausted manures. I would not call unexhausted manuring an "improvement" in the valuation of a holding in the same way that I would a permanent improvement.

12714. Would you value it into the rent?—No, my valuation would be what I believe to be the producing power of the land, irrespective of very high farming.

12715. Suppose a man, by the introduction of lime, or some other valuable manure from the outside,

Mr. *Sexton*—continued.

outside, warmed and enriched the soil, as we have been told here by an eminent chemist that it would, so that the effect might last for a generation, what would you do with the money spent upon that; how would you treat that?—I have always considered that lime properly applied to land is a decided improvement.

12716. And tolerably permanent?—And tolerably permanent. It depends altogether though upon where it is applied; if applied to cultivation of a mountain side, I think the effect is more durable than in the ordinary course of tillage of ordinary upland.

12717. And these improvements on the soil which do not affect the latent capacity of the soil, such as fences, gates, farm roads, or buildings, what do you do with them; do you give the tenant the whole value there?—That depends upon the condition they are in; the state of repair they are in.

12718. The value?—I give what I consider the fair value for them.

12719. Do you give the landlord any share of the letting value then?—No.

12720. You go into the Sub-Commission Court and you fix your value. You value, making an allowance to the tenant for being in occupation; I suppose a material allowance, for we know that the price of the landlord's interest is about 16 year's purchase, and the tenant can get 20 freely; the tenant's is the more valuable of the two. You say the measure is in the occupation-right; you give him 5 per cent on the improvements, and half the remainder; and that is the basis of your valuation in the Sub-Commission Court?—Yes.

12721. The Sub-Commissioners have told us, first, that they give him nothing else; secondly, they take no notice of the occupation-right. What relation does your valuation bear, as a rule, to the rent fixed by the Sub-Commissioners; what relation does it bear to the old rent; is it higher or lower?—It all depends on what the old rent was.

12722. I am asking you what is the common rule; the usual case. Is your valuation lower than the old rent generally?—No, I do not believe it is lower than the old rent generally; but it depends a great deal, as I say, upon the estates upon which I am valuing. On some estates that have not been very long in my charge, I have found the rents higher than in others that have been in our hands for a long time.

12723. Does your valuation generally approximate to the old rent, or exceed it?—Sometimes it exceeds it; but sometimes it is below it.

12724. At any rate, I suppose we may take it, as a rule, that is practically invariable that your valuation is substantially higher than the rents fixed by the Sub-Commissioners?—Yes, you may.

12725. Would you say 20 or 30 per cent.?—No.

12726. What would you say?—I would say probably 15 per cent.; but that really is only guess work.

12727. But it is substantially higher, as a rule?—Yes, it is higher than the rents fixed by the Sub-Commissioners.

Mr. *Sexton*—continued.

12728. Do you observe the extraordinary position of this question. I may call it inexplicable: You value the rent, making a substantial allowance for the occupation-right; you give the tenant 5 per cent. on his outlay; you give him half the rest of the letting value; but you go before the Sub-Commission Court with that valuation; that Court declares to us here that it does not take any account of occupation-right; that it only gives a percentage upon outlay; and yet this rent, as fixed, is much lower than yours?—No matter what they say, I do believe they take the occupation interest into consideration, and very material consideration. Why do they ask me: am I valuing this for an occupying tenant, or as if it were in the landlord's hands?

12729. Do they ask you, if you are valuing as for an incoming tenant, or as for the tenant already there?—They ask me whether I am valuing the land as for the person in occupation, or as if it were in the landlord's hands.

12730. Is that a question commonly asked?—That is a question commonly asked. I have been asked it over and over again, and have heard other people asked the same question.

12731. I would be very much obliged to you, as one member of the Committee, if you could forward to us any report which would show that that subject was discussed in any Sub-Commission Court?—Have you had any valuers before you who have been before the Sub-Commission Court?

12732. You are the first non-official valuer we have had before us?—I would be very glad if you asked other valuers. You will have no opportunity, I suppose, now of doing that; but if you asked other people they would give you the same answer.

12733. Were you ever asked the question yourself?—I was.

12734. Did you answer it?—I did.

12735. How did you answer it?—I say I value the land as for the tenant in occupation.

12736. Was the tenant represented by counsel or solicitors?—Always by a solicitor.

12737. Were you ever asked what you would value it at if you were fixing it for a solvent tenant coming in?—I think so.

12738. What did you say?—I have said what I thought at the time.

12739. Did you state the price you would have put on in that case?—I did. I really cannot say now if I named a special figure.

12740. But you think you did. You think you enabled the cross-examiner to understand what difference it made in your valuation as between a man coming in and the man inside?—I do, and the Court.

12741. Even in the face of the evidence of the three legal Sub-Commissioners, Mr. Greer, Mr. Bailey, and Mr. Doyle; that they have never taken the occupation-right into account?—I do not know what they said.

12742. No one thinks of putting on the highest rent that could be got in the open market?—No, certainly not.

12743. What they do is that they consider the rent that a solvent tenant coming into the farm would

Mr. *Sexton*—continued.

would be willing to pay?—Yes, coming in if it were in the landlord's hands.

12744. Of course he could not come in unless it was in the landlord's hands?—Unless he bought out the other tenant, and entered by purchase.

12745. Is it off that rent, the rent that a solvent tenant could reasonably give on coming into a farm in the landlord's hands, that you allow the deductions?—Yes.

12746. Not off the competition rent?—No.

12747. There is still another puzzle, and it is this, that when the rents come up from the Sub-Commission Court to the Appeal Court, in Dublin (where Judge Bewley tells us that he does take the occupation right into account), the rents of the Sub-Commissioners who do not take the occupation right into account, going to a judge who does, are still further increased. Is not that very strange? Do you conceive it to be reasonable or credible that this system of rent fixing has gone on for 13 years in Ireland in all these County Courts, Sub-Commission Courts, and Appeal Courts, without the legal question ever having been raised: "Does the fair rent include the occupation right?" If that occupation right was really taken into account at all, could that be so?—My impression is that it is always taken into account.

12748. Whatever you may do, I submit to you that it is clear that the reason why the question of occupation right has never been raised as a legal question, and brought forward in the Court of Appeal, is this, that it never, as a matter of judicial practice, has formed an element in fixing judicial rent. Does your experience (your experience as a very competent man, I think; your experience as a land agent) suggest to you that, if occupation right was measured in the rent, the rent-fixing could have gone on for 13 years without the question or contention having been raised as to whether it ought to be in the rent, and a value attached to it, and that question brought forward for decision?—I think it is quite possible, when there have been no instructions laid down, or no rules and instructions for Sub-Commissioners to act upon. They must do the best they can, but I cannot get rid of the belief that it was always present in their minds. They are sent there to fix fair rents, and fair rents for the tenants in occupation; and I believe it was present in their minds that the rent they were going to fix was to be the fair rent for the tenant in occupation.

Colonel *Waring*.

12749. I think you said that Sir James Caird afterwards admitted the impossibility of fixing the rent upon a scale of prices. Was there any authorised scale at the time of the Cowper Commission, such as is now in existence?—I am not aware of any.

12750. You are aware of the prices now collected by the Land Commission?—Yes.

12751. And you have said that you believe they represent the true state of affairs and are fairly collected?—Yes.

12752. You have been asked what would have happened under your scheme in the years 1878, 1879 and 1880. Is it a fact that all these three were bad years?—No; not what you would call bad years.

Colonel *Waring*—continued.

12753. Eighteen hundred and seventy-nine, we all know, was a bad year?—1879 was a very bad year; 1878 was less bad; 1877 was less bad still; 1876 was an extremely good year.

12754. Do not you consider, or do you consider, that it requires a considerable amount of cultivation to bring land back to its original virgin value?—I am not talking of mountain side. I have had no experience of prairie value.

12755. Prairie value, as it is usually interpreted by our friends, means mountain side?—If good grass land has been broken up and exhausted, it takes a very long time indeed, or a considerable time, to bring it back.

12756. Is the rate of wages now increasing at the present moment?—I think it is just about at a standstill.

Mr. *Dillon*.

12757. You stated that you were the chairman of the Land Agents' Association of Ireland?—Yes.

12758. Do you belong to any other association?—I am a member of the Landowners' Association.

19759. Anything else?—What sort of associations do you mean? If you name any association, I will tell you.

12760. The Property Defence Association?—No.

12761. Have you ever subscribed to it?—Yes; I have subscribed to the Property Defence Association.

12762. The Emergency Association?—There is no such association in existence now.

12763. Did you subseribe to it when it was in existence?—Yes.

12764. Were you a member of the Landlords' Corporation?—Yes.

12765. Then you seem to have been a member of all these associations. You stated that you had always made an allowance, in fixing a rent, for the occupation interest of the tenant. That occupation interest existed, I presume, before the Act of 1870?—Yes.

12766. Was it then a legal or an equitable right?—Equitable.

12767. Then in your view, a tenant, before the Act of 1870, had an equitable property in the holding?—He had an equitable property in his unexhausted improvements, in the holding.

12768. Had he an equitable property in his occupation right?—No.

12769. He had not?—No.

12770. Did it exist? You stated to me just now that you were in the habit, before the Act of 1870, of recognizing a property called an "occupation interest?"—I did not say exactly a "property;" I said that his occupation interest was always taken into consideration in my valuations.

12771. The tenant's occupation interest?—Yes. I did not call it a "property."

12772. If you took it into consideration in your

Mr. *Dillon*—continued.

your valuation, it must have been of value?—I thought it a fair thing to do.

12773. You thought it a fair thing to do?—Yes.

12774. If you thought it a fair thing to do, does not that correspond to an equitable right in the tenant. Why was it a fair thing to do as regards your employers, if the tenant had no equitable right?—Because every landlord, I think, has a leaning to his own tenant.

12775. And that is the only ground on which you made the allowance?—The only one.

12776. You told me just now that you thought he had an equitable right?—In his unexhausted improvements.

12777. Then you recognise the occupation interest as something over and above the occupation interest?—I do. I recognise it as a sentimental thing. Of course it is a legal interest now; but I used to recognise it as, perhaps, what it might be called, a sentimental interest.

12778. Do you believe that that was the general practice of the Irish landlords?—I do think it was the general practice.

12779. What was your practice when it came to evicting a man for non-payment; how did that affect this "sentimental" property?—One made every effort that one could to avoid that. I gave him every chance of remaining.

12780. By making him pay his rent?—Yes, by making him pay, on certain conditions; and very often very far from all that he owed.

12781. But when you come to evict him, did you allow for this "sentimental" property?—Yes, it was always taken into consideration in the case of an eviction. It was only as an extreme measure that that was resorted to.

12781.* How was it "taken into consideration"?—Merely by one's unwillingness to evict the man until every means had been exhausted to keep him there.

12782. That is every other means of getting the rent, I presume. Did you approve of the policy of the Acts of 1870 and 1881?—I approved of the policy of the Act of 1870.

12783. And of the Act of 1881?—No.

12784. It appears to be the Act of 1881 which has legalised this occupation interest to the tenant?—Yes.

12785. When asked to define "occupation interest," you said, "As a rule it is simply the interest that the law confers upon him" . . . "the law gives him a right to sell his interest in his holding, subject to pre-emption by the landlord." That is the way you put it yesterday. That was conferred by the Act of 1881?—Yes.

12786. You did not approve of that Act?—I think it went too far in abolishing the landlord's rights.

12787. But you were not in favour of protecting this equitable interest of the tenant, or "sentimental property," as you have described it. Would you state to me how you think the right of pre-emption affects the tenant's interest?—Practically it does not affect it at all; it is so little made use of.

12788. It is so little made use of; but it may be made use of?—It may be made use of.

Mr. *Dillon*—continued.

12789. If that be so, if the only justification for the pre-emption right is that it is so little made use of, why do you think it ought to be the law?—Because it is just those exceptional and seldom heard-of cases where it might be of use, and would not hurt the majority.

12790. Have you directed your attention to the fact of the sales of tenant's interest in King's County (with which you are the most familiar) in this return?—No, I have not.

12791. They are very remarkable. I should like to know whether you can give any explanation about it. I find that 83 farms have been sold in the King's County on non-judicial rents; 83 farms which have not had any judicial rents fixed have been sold; and the average price given was 5·2; 20 farms that have had judicial rents fixed have been sold, and the average price given was 4·3. Can you give any explanation as to why the price of the tenant's interest in the King's County is only 4·3 on the judicial rents. The only case you know you said was 11 years?—Yes.

12792. The return handed in shows that the average is 4·3 years. We have heard vague evidence of 40 years?—You mean of the tenant's interest, not the specified value?

12793. This is your own return, and I am now reading what you have handed in as a return of sales by tenants, and I find that 20 farms have been sold in the King's County and are entered on this return, and the average price obtained for judicial holdings is 4·3, one year less than the price obtained for farms on which no judicial rents have been fixed. Can you explain this?—I cannot.

12794. Can you reconcile it with the evidence you gave in which you led us to suppose that it was 11 years?—I cannot, for it is not my experience.

12795. It is the certified return of the landlords' executive Committee of Ireland, and certainly that is the last place where we would expect to see these figures fixed low?—Yes; it certainly does not correspond with the sales that have taken place upon the estates or properties that I have anything to do with.

12796. Do you give us to understand that this return is not reliable?—Oh, no; I will not make any such statement as that.

12797. It is perfectly manifest that either your evidence must be misleading or this return must be misleading, they differ so enormously, so widely. You would be, presumably, one of the gentlemen from whom information would be sought by the Landlords' Committee?—As a matter of fact, I do not think I did furnish any returns to the Landlords' Committee whatever as to the sales of properties.

12798. It is an extraordinary fact; here is a return placed before this Committee and now we are informed by the Chairman of the Land Agents of Ireland that he was never asked?—I do not say that I was not asked; I am quite sure I was asked.

12799. You did not give it?—I did not give it. I do not think it was given from my office; I would not be positive, but I do not think it was.

12800. That does not say much for the return; but

Mr. *Dillon*—continued.

but the fact as it stands is very peculiar. It is not favourable to the landlords in King's County if a farm is worth only four years' purchase. In Antrim and Armagh there are sales for 20 years' purchase, and in King's County for four. Can you give any account of that?—I cannot; that certainly does not correspond with my experience, I must say, of what a tenant's interests are.

12801. You said a very curious thing just now, it struck me as very remarkable; you repeated over and over again that you had no experience whatever of Ulster; no knowledge of Ulster?—I meant "no experience" of course, as a land agent; that I had no dealings with Ulster tenants whatever. Of course, I cannot live in Ireland and not know something about Ulster.

12802. Still, when asked to account for the different prices at which tenants sell in Ulster and in other provinces, you stated immediately that the improvements in Ulster were of a far superior description; how did you know that?—I have always heard it.

12803. That was simply hearsay?—I have been through Ulster, and I have seen the class of buildings upon small farms in Ulster, and they are very much better than any buildings and improvements upon the small farms in the counties that I have to deal with.

12804. A question or two more on the way in which you deal with this occupation interest. You said you always made allowance for it in fixing the rent?—Yes.

12805. Are you utterly unable to give us any idea, even a rough idea, of what percentage you allow?—It would depend, as I said before. I have always been inclined to make a larger allowance for a tenant that has been long on the holding, or a family that has been long there, than for others.

12806. Do you make it in proportion to the length of their occupation?—If the tenant had got the farm recently out of the landlord's hands, and had not effected improvements, of course, I would not take that into consideration at all in the same way that I would in the case of the tenant who had been a long time in occupation.

12807. Would you take it into consideration if the tenant had been there a hundred years before the landlord was heard of; would you give him an extra allowance for that?—Yes, I would; I would consider that he had a landlord some time or other.

12808. Do I understand you to say that you would make your allowance proportionate to the length of time the tenant has been in occupation?—Yes.

12809. That is your system?—Yes.

12810. Now about town parks; you said you thought it would be a great hardship, both to owners of property and the inhabitants of towns, if the town parks were brought under the Land Acts. What do you think would be the vote of the inhabitants of the town if the question were put to them to-morrow by vote?—I am quite sure that all those that have town parks would vote for going under the Land Act; I am quite sure those who have not been able to get any fields would vote that they should have the chance of getting them.

Mr. *Dillon*—continued.

12811. Why?—Because they would have no chance of getting them otherwise.

12812. What reason is there to suppose they have the chance now, if they have not got them?—Town parks frequently change hands; and the landlord has an opportunity of frequently taking up town parks and accommodating others.

12813. By evicting people?—Sometimes by evicting them, sometimes by taking up the land, and sometimes by mutual arrangement; perhaps a man changes his residence, and may not require it.

12814. Do you think that mutual arrangements are never made without the intervention of the landlord; I mean, mutual arrangements between the landlord and the occupying tenant?—Very often; in many cases, or in some cases, at all events, a merchant who has been living in a town would resign a field, or it may be two or three fields; it may be that he goes to live in the country a little way out (it is becoming rather general to take a house a short way out; either build it or rent it), and comes in and out to his business. Such men do not want town parks any more, and that gives an opportunity for the landlord to get them, and distribute them among others who do require them.

12815. Just one question more about town parks: you said it would be a serious injury to towns growing in Ireland, and wanting accommodation, if the land round the town were to pass into the hands of a few people?—Yes.

12816. Do you think it is an improvement that it should be in the hands of one man?—I do; for that man has the interests of the community to consider.

12817. Then you think the lordlords in Ireland are pre-eminently careful of the interests of the Irish towns?—I do.

12818. That is not my experience?—Well, it is a mutual interest.

12819. Now just one or two questions on your scheme of prices: You gave us a very interesting scheme for arriving at the average fall or rise in prices in such a way as you thought would operate fairly in the district in dealing with the rents on an automatic system?—Yes.

12820. Now we will suppose that under your scheme you made out a fall of 20 per cent. in the articles you selected, how would you bring that to bear on the rent. Suppose the tables you suggest, to be prepared by the Land Commission in Dublin, showed an all-round average fall of 20 per cent., how would that affect the rent in your mind?—If the rent had been fixed?

12821. How would you proceed to apply this table scale of rents?—The rents would go down 20 per cent.

12822. Is that your idea?—That is my idea.

12823. Do you think that is fair, that they should go down?—Whether I think it fair or not it would have to be done.

12824. Is that your proposal, that a fall of 20 per cent. in prices should bring a fall of 20 per cent. in rents?—A fall of 20 per cent. in prices, compared with the standard of prices at the time that the rent was fixed, would bring a fall of 20 per cent. in the rent.

12825. That

Mr. *Dillon*—continued.

12825. That is your proposal?—That is what would happen.

12826. And a fall of 50 per cent.?—If prices went down 50 per cent. then a fall of 50 per cent. in rent.

12827. You would only give the reduction of 50 per cent.?—I would give the 50 per cent.

Mr. *Brodrick.*

12828. With regard to Section 8 of the Land Act of 1881, you were asked this question, whether you found it easy to induce the Sub-Commissioners to hear "all the circumstances of the case, holding, and district"; I want to know clearly whether you consider that under all the circumstances of the case, holding, and district there should be included the prices paid for tenant-right to tenants adjoining these farms or not?—I think it would be reasonable that such should be done.

Mr. *Clancy.*

12829. You expressed the belief that the statistics regarding prices collected by the Land Commission are fairly accurate?—Yes.

12830. You have great confidence in them?—I have, from the way that I believe them to be collected in my own district.

Mr. *Clancy*—continued.

12831. And I suppose you would have still greater confidence in them if you knew that the head of the department of the Land Commission which collects those statistics is the head of the well-known landlord family, Mr. Archdale?—I do not think that would prevent him acting fairly.

12832. You would have greater confidence in them under those circumstances?—Yes.

12833. Do you know Mr. Cooke Trench in Kildare?—Yes, I do.

12834. He is a man high up in your convention, is he not?—Do you mean the Landowners' Convention?

12835. Yes?—I think he belongs to it.

12836. He is a man held in great esteem by his class?—He is.

12837. And probably he expresses the views of the greater number of his class?—I cannot answer for that.

12838. Do you know that recently he expressed an opinion in favour of including all "future tenants" within the scope of the Act of 1881?—I do not.

12839. Would you agree with that?—No.

Mr. WILLIAM A. BARNES, called in; and Examined.

Mr. *W. Kenny.*

12840. I BELIEVE you have been engaged in agriculture for a great number of years?—Yes, since I have been fit to do anything I have been employed in agriculture.

12841. Over 30 years?—Yes, fully that.

12842. Have you any land in your own hands? Yes, about 500 acres.

12843. How many of those are in tillage?—120.

12844. Are you a tenant or a landlord?—I am a tenant and landlord and owner in fee, at least I am owner in fee of a portion of it, and tenant of a portion. I have one tenant; that is all the tenants I have, and I have two landlords.

12845. Is the portion you occupy as a tenant a larger portion than the portion you hold in fee?—No, it is not; the portion I hold in fee is the larger one.

12846. Now, have you made valuations from time to time for purposes of arbitrations?—Yes, a great number.

12847. Was that before the Act of 1881?—No, not before, but in the beginning of 1882, and up to the present time.

12848. And have you been employed as a professional valuer before the Sub-Commissions and before the head Land Commission?—Yes, very extensively.

12849. I presume you have inspected a great number of farms in Ireland?—I have gone over very nearly half a-million acres; I think I have given evidence in over 2,000 appeals before the Chief Commissioners.

12850. What counties have you valued in?—I have valued in every county of Leinster; I have valued in every county of Connaught and Ulster, with the exception of Donegal, Tyrone,

Mr. *W. Kenny*—continued.

and Derry; I have not valued in Munster, with the exception of the county of Tipperary.

12851. Then may I take it that you have made valuations in something like 24 counties out of the 32?—Yes.

12852. I think you say you have given evidence in a great number of cases before the Sub-Commissioners?—Yes, an immense number of cases.

12853. And the Head Commission?—Yes.

12854. In the various towns in which they were held?—I have given evidence in 50 towns before the Sub-Commissions.

12855. Have you been employed both for landlords and for tenants?—Yes, for both.

12856. Now, as a practical farmer, what is your experience in Ireland as to whether or not it pays?—What, farming?

12857. What is your experience; does it pay or does it not pay?—My experience certainly is that it pays.

12858. That it does pay?—Yes, both tillage and grazing; and, in fact, during the last 10 years tillage has paid me better than grazing.

12859. Is it your opinion that the small farmers are doing better than the larger farmers, or the reverse?—I think the small farmers of late years are doing much better than the large grazing farmers.

12860. Now, have you considered the question, I presume you must have from time to time, of tenants' improvements?—Yes, I have; they have come before me very frequently.

12861. Do you find the tenants' improvements are on a large scale on the various farms that you have valued?—Oh, no; as a rule, they are not, decidedly. You meet an odd farm, a very occasional

Mr. *W. Kenny*—continued.

occasional farm, on which there are substantial improvements, but that is an exception; there is far more land deteriorated than there has been land improved.

12862. Now, will you take the various classes of improvements that are alleged. In the case of drainage, do you find that the drainage has been done by the tenant, wherever you do find drainage, in an efficient way?—Not in all cases; it is very superficial, they make the drains very shallow, and they get stopped, and they do not keep the outfall clean.

12863. Do you find in your experience that the amount claimed by a tenant in respect of his outlay for improvements by way of drainage exceeds the amount of benefit that is derived from the improvement?—As regards drainage, it would, decidedly, very often; not always, but very often.

12864. Now, upon the question of buildings. Do you find that the landlord has assisted in the erection of buildings?—On some estates I find it, but on a great many estates it is not so.

12865. How has he assisted?—Sometimes he has erected the buildings himself, sometimes he has allowed a certain amount of money towards erecting them. I can give the names of some of the landlords; I cannot give them all. On Lord Erne's estate I have seen houses erected by the landlord, and it is a common thing on some estates to give timber and slates; where the tenant erects the walls the landlord gives timber and slates. On Colonel Saunderson's estate I have seen similar instances, and on Colonel Maxwell's and Lord Headfort's estates, a great number of cases I could go into. I do not say it is so generally over the whole estates but I often meet with cases of the sort.

12866. When you come to value for the purpose of having fair rent fixed, is there a percentage only allowed upon the landlord's expenditure?—I allow generally 4 per cent. up to a certain figure. If I found a farm worth 20*l.* a year rent, and that there were buildings on that worth 500*l.*, I would not put interest at 4 per cent. on them; I would only put on for what I would consider would be fair accommodation for a farm of that size; I would do no more, however well-built they might be; I never put more than 4 per cent.

12867. Now, when estimating the rent where there have been improvements, is there a percentage allowed to the tenant upon his outlay, or on outlay which has resulted in an increased letting value?—I think that is the system adopted usually by the Sub-Commissioners. It is the system I adopt. If I find that there is value for the improvements, I allow 5 per cent. for them; if not, I allow whatever I think them worth. I have no fixed scale; some improvements may cost a good deal and be worth very little in benefiting the land.

12868. Do you go beyond 5 per cent.?—No, I do not.

12869. Do you find that there are cases in which, after allowing 5 per cent. upon the tenants' improvements, there is any increased letting value over and above that?—I think there might be some cases, particularly where bog land is reclaimed at a small cost, which is very frequently the case. I think there might be, after allowing a percentage on the cost of that reclamation, an increased value in the land over and above that; I think that is quite possible.

12870. Do you confine that answer to cases in which bog lands have been reclaimed?—Well, generally I do not think drainage, as usually effected in Ireland, would much more than give a return that would pay the outlay.

12871. In cases of that sort, where you find there is an increase in the letting value over and above the amount of the percentage that you allow to the tenant, what is your practice with reference to the allocation of that increased letting value?—I deal with it just in the same way as I allocate the net profits of the farm in the first instance; on a mixed tillage farm, two-fifths of the net profit would go as rent; that is to say if the farm had been improved 5*s.* over and above the expenditure, then the tenant would get 3*s.* and the landlord 2*s.*

12872. Is that your invariable custom in making a valuation where there is increased letting value over and above the expenditure of the tenant?—Yes; that is on a mixed farm; in a tillage farm there may be something more allowed to the tenant, in a purely grazing farm it would be less.

12873. Now on the question of buildings. Is it your experience that the landlord does not claim them unless he has got some substantial reason for doing so?—No, I have never seen them claimed unless the landlord had some reason for thinking they had been erected by him, or that some money had been expended on account of them, that is, as a rule, there might be an isolated case on which such a claim might be made, but as a rule it is not so.

12874. Do you find in your experience that the tenants have a difficulty in proving their improvements?—Well, the only improvement they have any difficulty in would be with a reclamation made a great number of years ago. Of course it might so happen in the case of a reclamation made 50 years ago that they could not prove it.

12875. Would you include in reclamation the removal from time to time of furze and rocks?—I would not consider the removal of furze a reclamation; that is only restoring the land to what it had been before the furze grew.

12876. What do you call "reclamation"?—I would call reclamation bringing land into a condition to grow crops when it was not able to grow them before or to be used for any agricultural purpose. Of course a great deal of the reclaimed land is used for pasture, but it was tilled in the first instance to get it reclaimed.

12877. In these cases your experience is that the tenant does not experience any difficulty in proving his improvements?—No, very rarely; it hardly ever occurs I think. It is only in cases of very long date that he can have this difficulty; then in that case the improvements have generally become exhausted, except in cases of reclamation.

12878. Now in cases of drainage, in order to test the tenants' right to the drains, have the Commissioners to open them up?—Well, I do not know what is the practice of the Commissioners, but if you wanted to do it, that is the only way it could be done. I do not know whether

Mr. *W. Kenny*—continued.

whether they actually do that or not; it could not be tested in any other way.

12879. Where the landlord has claimed improvements, have you found that he has experienced difficulty in proving them?—I find a great many landlords have not got entries of allowances made; they do not keep books very often, particularly on the smaller estates, and even on some of the larger estates too; and particularly in the cases of estates purchased in the Landed Estates Court, they have no record at all of previous improvements.

12880. That is, previously to the sale in the Landed Estates Court?—Previous to the sale; I believe a great many buildings have been erected, or paid for, by landlords, of which no proof can be given in those cases.

12881. So that, so far as that is concerned, the landlord would be in as bad a position as the tenant for anything in the shape of a record?—He could not have any.

12882. You are acquainted with these originating notices, and the claims that are put upon the back of them?—Yes.

12883. They have come before you, I suppose, in sheaves. Have you found that in a large number of cases the claim made by the tenant for improvements is too wide or too large?—Oh, very often. I have often got a claim for more than double what actually existed when verified on the farm.

12884. Could you give any instances?—No, not at this moment. I came over here very hurriedly, otherwise I could give instances; I could give a hundred instances.

12885. In the reclamation of bog, have you found claims made by tenants for the filling up of bogs and the making of drains in connection with them?—Of course, reclamation of bog is a very difficult thing to estimate for a number of years. It may have cost 7*l.* or 8*l.* an acre, that is an Irish acre, to reclaim a bog, and it may not have cost more than two or three. Without seeing that land in its original state, no one could tell what had been expended upon it; but as a rule the reclamation of bog consists of filling up holes and levelling the ground.

12886. £7 an Irish acre would be about 3*l.* or 4*l.* a statute acre?—That is a very large sum; it is very seldom that it takes that sum to do it. A bog must be cut very low to cost that much. Then those bogs are very often cut down by the tenants themselves in the first instance.

12887. I think you said you found there was a great deal of deterioration?—Yes, there is a good deal of deterioration on small farms.

12888. Does that arise from over-cropping without manuring?—Yes, they do not attend sufficiently to preserving their manure, they waste a good deal of it. Then they use a great deal of artificial manure; they depend too much on it, and they allow weeds to grow to a fearful extent. They have an objection to weeding; they think it does harm to some of the crops.

12889. Do you find it difficult to value land when it is in a state of deterioration?—When land has been deteriorated for a number of years its character changes, and no one could actually tell what it was worth in its original state. They can see it is deteriorated, but they cannot tell how much it has deteriorated; and in the same way, if land had been very well treated for a number of years, it would be equally difficult to ascertain its original character.

Mr. *W. Kenny*—continued.

12890. And it is difficult to ascertain what the exact character of the land is when you find it in that state?—Yes, it is difficult. You can tell approximately, but not accurately.

12891. And is it your opinion that in these cases of deterioration, the landlord suffers where the fair rent is fixed?—The Commissioners always fix the rent on the land in the state in which they find it. That is my experience.

12892. Do you know anything about the sums realised on the sales of tenants' interests?—Yes, I do. I know some cases, in fact, I know a great many cases; but I can give you some specific ones.

12893. Can you give us some specific ones?—Yes.

12894. In what counties?—Principally in my own county, the county of Meath.

12895. Are they cases of judicial or non-judicial rents?—Two of the cases are non-judicial rents, and two are judicial.

Mr. *T. M. Healy.*

12896. Is this grazing, or tillage land, or what?—Grazing land.

Mr. *W. Kenny.*

12897. Give us the particulars. What is the first case?—The first case is John Keating, tenant; Edward Richard Taylor, landlord. The rent was 247*l.*; it sold for 2,110*l.*

12898. Is that non-judicial or judicial?—Non-judicial.

Mr. *T. M. Healy.*

12899. What is the valuation?—I could not tell you what the valuation is now. If I had time I could have given all the information.*

12900. What sort of land is it; is it fattening land or tillage?—A portion of it is good fattening land.

Mr. *Clancy.*

12901. Are these typical cases?—No, they are just cases I remember.

Mr. *T. M. Healy.*

12902. Give us the date of the sale please?—It was in 1893, I think in the beginning of 1893, as well as I remember, or in 1892.

Mr. *W. Kenny.*

12903. That is a case of a non-judicial rent in the county of Meath, is it?—Yes.

12904. Now, can you give us another case of non-judicial rent?—Yes, Joshua Clare.

12905. Is that in the same county?—That is in the same county.

12906. What was his rent?—His rent was 12*l.*

12907. What was it sold for?—£1,270.

12908. Was that pasture or tillage, or a mixed farm?—That was a grazing farm.

12909. Now can you give us any cases of judicial rents?—I can give you the case of a judicial rent that I purchased myself of the representatives

* Valuation has since been ascertained to be 220*l.*

Mr. *W. Kenny*—continued.

presentatives of Rev. William S. Garnett. I purchased their interests. The rent was 34*l.*

Mr. *T. M. Healy.*

12910. You would know the valuation in that case?—Yes, the valuation was I think 39*l.*; that was a farm that had very much deteriorated.

Mr. *Carson.*

12911. Was there an evicted tenant there?—No; I purchased it from the tenant. I purchased the tenant's interest.

Mr. *Hayes Fisher.*

12912. Do you mean you purchased it for yourself?—I purchased it for myself.

Mr. *T. W. Russell.*

12913. What did you pay for it?—£320. I have these two cases. In the other case I exercised the right of pre-emption; I bought of the representatives of Matthew Reilly.

Mr. *W. Kenny.*

12914. Do not pass from this case of Garnett. In Garnett's case, did you buy at public auction?—I bought it at public auction.

12915. Were there many bidders?—There were a good many bidders.

Mr. *Fuller.*

12916. Is that a grazing farm?—Well, it is in grass; but it has been used as a tillage farm. It is in grass at present.

Mr. *W. Kenny.*

12917. Can you give us the acreage?—The acreage is 40 statute acres, I think. The other was a farm (which I wished to compare with it) in which a specified value had been fixed. The rent was 49*l.*; the specified value was fixed at 44*0l.*

12918. What was the name of that case?—I was the landlord myself, and the representative of Matthew Reilly was the tenant.

12919. In what year did you buy Garnett's farm?—This year.

12920. 1894?—Yes, in May last.

12921. And in what state did you find the farm?—It was very much deteriorated.

12922. Was it deteriorated?—Very much so.

12923. It was?—Very much so, yes. I gave evidence on the hearing of the case, and I valued it at 40*l.* if it were "in condition"; but in its present state it was not worth more than the Commissioners put on it, 34*l.* The rent had been 37*l.*

12924. I do not know whether you know whether the tenant was disappointed in the rent he got it fixed at?—He expected no decrease at all; he only wanted to get the judicial rent. He told me so.

12925. He expected no decrease?—No.

12926. Can you give us any other case of a judicial rent?—Do you mean of sales?

12927. Yes, if you have any others, I do not know whether you have any?—No, I do not think I can give you particulars of any. I know of a great many if I had only time to get them.

12928. In fixing a fair rent, apart from the question of improvements, do you take the question of the occupation interest into consideration?—Yes, certainly. I consider that the difference between a so-called fair rent and a competition rent is the occupation interest.

Mr. *Sexton.*

12929. What? A competition rent?—What it would let for if it were in the landlord's hands.

12930. If put up for bidding?—I would not say "if put up to bidding"; that would put it up to the extreme price, that would be the outside figure. I say a fair competition rent, what a landlord would take from a solvent tenant for the farm. I consider that that would be a fair competition rent.

12931. You say the occupation interest is the difference between what the tenant would reasonably give without a bidding and the fair rent?—And the judicial rent; the so-called fair rent.

Mr. *W. Kenny.*

12932. That is the rent that the landlord would accept, he having the farm in his hands, from an ordinary solvent tenant?—Yes, the difference between that and the fair rent, as fixed now, I consider would represent the occupation interest.

12933. When you make your valuation, what is the difference you make?—I consider the rent I fix is a fair rent. If it were in the landlord's own occupation he would get 25 per cent. more than what I put on for it.

Mr. *Sexton.*

12934. That is the occupation value?—I consider that is the occupation value. I do not see why the tenant should get anything less than the competition rent, unless it were on account of his occupancy, of course leaving improvements out of the question; that is a different thing.

Mr. *W. Kenny.*

12935. Have you considered the question of fixing specified value upon tenancies?—Yes, I have seen a good deal of it.

12936. Have you been in cases where the Commissioners have refused to fix the specified value?—They do not like fixing it, if they can avoid it, unless they get very good evidence; they are afraid of the question, I think.

Mr. *Carson.*

12937. But they do not shirk fixing a fair rent?—They do not shirk fixing a fair rent; I would not say that they actually shirk fixing specified value, but if they can get out of it they try and do so.

Mr. *T. W. Russell.*

12938. They have said so here, so that you need not hesitate about it?—But I do not like to put it in that way.

Mr. *W. Kenny.*

12939. Do you think the fixing of the specified value works injustice to the tenant?—No, certainly not, for this reason: If tenants claim under the Ulster custom they cannot have the specified

Mr. *W. Kenny*—continued.

specified value fixed; it is only the tenants outside the Ulster custom that can have the specified value fixed. Those men have never paid a shilling for their interest in the holding; they have got in without paying any fine, where the Ulster tenants have paid (themselves or their predecessors) very heavy fines to get into those holdings. Then the Head Commissioners have laid down that the specified value and the true value should be what a solvent tenant would give for the farm, expecting to get a fair return for his money; therefore the tenant still gets a fair price for his farm, even though the right of pre-emption is exercised. Then the landlord cannot take the farm and sell it again, as suggested, because within 15 years, if he lets that farm again, that man to whom he lets becomes a "present tenant."

Mr. *Sexton.*

12940. That is, within 15 years from the passing of the Act?—I understood it was 15 years from the time he exercised the pre-emption.

12941. You are wrong; it is 15 years from the passing of the Act; and of course he could let it to a "future tenant" to-morrow, and sell the tenant-right to him?—That may be so.

Mr. *W. Kenny.*

12942. Do you find the price of tenancies in Ulster different to what they are in other parts of Ireland?—Yes.

12943. To what do you ascribe that difference?—There are two or three reasons. First of all the Ulster holdings are a great deal smaller than the Leinster holdings; and the smaller the holding the greater the competition will be; as of course there are more men who have money to bid for the small holdings than for the larger ones. Then the sale by custom in Ulster has been going on for a great number of years; they have got accustomed to it; whereas in Leinster the sale of the interest of a holding was almost a thing unknown before the Act of 1881. There has been much greater trade in the sale of farms in Ulster than anywhere else. And then another reason is this: the Ulster tenants are more industrious, and make more improvements than the tenants out of Ulster.

Mr. *Dillon.*

12944. Do you think it is only because they are more industrious?—They make more improvements, and they make their holdings more valuable.

Mr. *Sexton.*

12945. And they can sell them for a higher price?—They get a higher price, and that is all.

Chairman.

12946. When you said "more industrious" that is a remark which needs some qualification; I mean from your answers to Mr. Sexton and Dillon. You said: "Because they are more industrious"?—Because they are more industrious they make more improvements, and consequently those improvements render those farms more valuable when they come to sell them.

Chairman—continued.

12947. Does it follow that they make more improvements, as you have just intimated, because they are more industrious?—Yes; I should say an industrious man would make more improvements than an idle man.

Mr. *W. Kenny.*

12948. Have you been concerned in fixing agreements out of Court?—Yes, I fixed a very large number of agreements out of Court, and have been fixing them up to the present time; I fixed more than a hundred last year.

12949. Have you been concerned for the tenant as well as for the landlord in fixing these?—They have been done by mutual consent of both tenant and landlord. I go on the farms and put a certain value on them, which I consider would be the rent fixed in Court. The tenant has the option then of taking that valuation or not; he can go into Court if he likes; but in the vast majority of cases they accept the valuation.

12950. They have accepted your valuation?—Yes.

12951. Is that going on down to the present time?—It is going on; I have 700 cases on hand at present to settle in that way.

12952. Have you been engaged in the fixing of these agreements since the passing of the Act of 1881?—Yes, as far back as 1882 I fixed a large number of rents by agreement.

12953. Do you find that in the great majority of cases the tenants have voluntarily accepted your valuation?—In a great many cases; the great majority of those cases, I may say.

12954. Are you acquainted with any cases in which improvements have been made with loans borrowed from the Board of Works?—Yes, the Lough Erne drainage scheme is the largest that I am acquainted with.

12955. Is that the case in which the landlord has borrowed the money, and interest at 5 per cent. has been apportioned?—Lord Lanesborough and Lord Erne were the principal landowners there, and they were rather averse to having anything to do with it. The tenants sent them a petition, and accordingly both Lord Lanesborough and Lord Erne agreed to the scheme; they sanctioned the scheme and the scheme then was passed.

12956. Have you fixed rents, or have rents been fixed, in any of those cases since?—Yes.

12957. I do not know whether you are able to refer us to any case?—I can give you the total amount assessed that they have to pay, and the amount that has been assessed on the tenant.

Mr. *T. W. Russell.*

12958. Is this the Lough Erne case?—This is the Lough Erne case.

Mr. *W. Kenny.*

12959. Will you give us the particulars of that case?—The drainage charge assessed on Lord Erne is 1,400*l.*; the proportion of that assessed on the tenants, is 421*l.* That was assessed by the Board of Works.

12960. That was before the fair rent was fixed?—Yes, before the fair rent was fixed.

12961. Out of 1,400*l.* assessed on Lord Erne, 421*l.*

Mr. *W. Kenny*—continued.

421*l.* was assessed on the tenants?—Yes. On Lord Lanesborough's estate, the amount assessed was 768*l.*, of which 192*l.* was assessed on the tenants. That is what was assessed by the Board of Works, and those tenants went into Court. Mr. Roberts of the Board of Works, and Mr. Thomas Roberts, who had been a Court valuer, went down and held an investigation. Mr. Thomas Roberts viewed the land himself, and considered what amount of improvement had been done by the drainage. That is the way in which what the tenants had to pay was assessed.

12962. They had to pay that?—Yes; as soon as the assessment was put on they went into Court and got their rents reduced, in a great many cases, below the old rents.

12963. And in those cases in which they have got the old rents reduced, does the landlord continue to pay the drainage charge?—He has to pay the whole of it, no matter what he gets out of it.

12964. So that taking them in the aggregate, these cases upon Lord Erne's property, the 421*l.* as I understand you, has been knocked off altogether, and Lord Erne continues to pay the 1,400*l.* a-year?—I think it will be so. They have not all gone into Court yet, at least they have not all been adjudicated upon; a great many of them have, but in the majority of cases the old rent was reduced.

12965. Now can you tell us anything about the fall in prices; we had some evidence from Mr. Toler Garvey about it, the prices of cattle?—With regard to the prices of cattle, I consider that the fall since 1887 to the present time, as compared with the prices obtained previous to that, would be about 15 per cent.

12966. Is this in store cattle?—In store cattle.

12967. It is in store cattle that the fall has been?—Yes.

12968. To what do you attribute the fall?—Well, the cattle have been gradually deteriorating since 1879. There were not so many good bulls distributed through the country as there had been before that time. The landlords did not supply the bulls as they used to in former times, and tenants would not give a high price for a good bull, and the stock became deteriorated. That is the experience of all the large buyers of cattle, that cattle have been getting less valuable in quality.

12969. I believe some of the local agricultural societies used to try to keep up the breed. Now the Royal Dublin Society are trying to spread bulls through the country again, and the stock probably will improve after that; but that is one reason why cattle depreciated?—Undoubtedly.

12970. Is there any other reason you wish to give except that?—No.

12971. Have you any observations to offer upon the question of town parks?—The doing away with the town parks would be injurious to the prospects of a town; you would have the inhabitants hampered by a number of the large shopkeepers in the town getting possession of a number of these holdings, as they most likely would do if they were made agricultural holdings.

Chairman.

12972. Most likely what?—They would get possession of a number of the holdings; they would buy them up and be able to give more for them than the smaller occupiers could give. I have known of towns where one shopkeeper would get two or three or four of these town parks together; and I do not think that is a good thing.

Mr. *W. Kenny.*

12973. Would it deprive the smaller shopkeeper of land?—They cannot get accommodation land; if one man gets too much the other must get too little, or none at all.

12974. Do you see any reason for suggesting any alteration in the law as it exists?—No, I do not think any hardship exists under the present law.

12975. Upon the question of pasture holdings, do you know these crag holdings in Clare that we have heard about?—I have seen them. I have never valued any of them, but I have been through the country.

12976. Have you walked crag lands yourself?—I have, but not as a valuer; I have valued crag-land in other counties.

12977. Is that crag land valuable?—Some of the best grass I have seen was grass in between the rocks in that crag land, and it is considered very valuable. Some of the Commissioners have told me that it is valued up to 30*s.* an Irish acre, but I cannot tell you that from my own experience.

12978. Would you consider it advisable to make any alteration in the law as it exists with reference to pasture holdings which are comprised in the Act of 1881?—Well, certainly not on the larger holdings; I think those tenants were in a very good position to make terms for themselves.

12979. On the question of sub-letting, do you consider it desirable or undesirable to encourage sub-letting on farms?—I would not encourage it most decidedly, because then the tenant becomes a landlord, and he generally makes a very bad landlord.

Mr. *Sexton.*

12980. Do you know that when the rent is once fixed a sub-letting is a breach of the statutory conditions?—Yes, I know that.

Mr. *W. Kenny.*

12981. Do you know of cases, in your own experience, where rents are charged by tenants to sub-tenants which are large and immense in comparison with the rents they themselves pay?—I know a great many cases where tenants sub-let their land; in fact a great many of the grazing farms in Meath are sub-let, and some are sub-let at very high rates over the figures paid by the tenants themselves.

12982. I ask you, do you know of sub-lettings where the rents are high in comparison with what the tenants pay themselves?—Yes, a great deal higher in comparison, far and away beyond what they pay themselves.

12983. Have you known tenants deterred from going into Court at all by the question of costs?—Oh, no; a great many of the smaller tenants,

Mr. *W. Kenny*—continued.

tenants do not go to any cost at all; they do not employ any solicitor, so it costs them nothing except for the stamp on the originating notice. I have known a great many tenants go into Court that way; it is a very common thing in Athlone, and also in Cavan and other places.

12984. Have you found that to exist in a great many counties?—I have met it in a great many places.

12985. And I suppose in those places questions of law do not arise?—No; if there were questions of law, it would be necessary for them to have some legal advice.

12986. Have you any suggestions to make as to the procedure that ought to be adopted, or that you would suggest ought to be adopted, at the end of the statutory period?—Well, I believe that it would be possible to work out a sliding scale, in the same way as the schedules were made in 1887, for reducing those rents previous to that year; and on the same principle, I do not see why it could not be done now.

12987. That is to say, to have rents fixed by automatic action?—According to price.

12988. According to a scale of prices?—Undoubtedly it is a very difficult thing to do, and would take a great deal of thinking and working out; but I believe it could be done.

12989. Have you seen the scale of prices published by the Land Commission from time to time?—Oh, yes, I have.

12990. Do you think they have been fairly and properly made out?—I think they are about the most reliable scale we have; in fact, I do not know any other that is reliable, except that which they have published. They go to very great trouble about it.

Chairman.

12991. You think that is a reliable scale?—I do; and it accords with my own experience in selling market produce. It is very reliable in my district.

Mr. *W. Kenny.*

12992. You contrast it with your own experience upon your own farm?—Exactly.

12993. And in your own working?—Yes.

12994. And you find the prices correspond?—I do, and from inquiries I made in other districts also, of the tenants, I find it corresponds with what they have been doing.

12995. Now, in the case of new procedure at the end of the 15 years, would you suggest that the right of appeal should be retained in all cases?—Yes; I would certainly retain the right of appeal in all cases.

12996. Have you any particular instances in your own mind which lead you to come to that conclusion as a proper one?—Well, I think there would be a great want of uniformity amongst the Sub-Commissioners if there was not a right of appeal, because there is no doubt that they vary very much in their ideas, and if they had no means of having rents checked after they had fixed them (as they have now in the Court of Appeal) they would have no opportunity of assimilating to each other as they have been doing a little more of late than formerly.

12997. Then do you consider it advisable to retain the right of appeal upon the question of value?—Value is what I mean,

12998. You are confining your observations to value?—Oh, yes; altogether to value.

12999. I suppose you have valued the whole of the estates with which you are connected from time to time?—Yes, in many cases, but not in all.

13000. Apart from any particular holding on a particular estate?—Yes.

13001. Are you able to tell us what your experience has been with reference to increases of rent upon particular estates?—It is very rarely that I find any increase of rent on any estate. There is no higher proof of that than the figures published by the Land Commission themselves. I have very seldom met a case of increased rent unless there has been an increase in lands; very rarely on the estates I have to deal with.

13002. And I believe you have valued between 300 and 400 estates?—It is generally on estates purchased under the Landed Estates Court that I have found a rise; that is where the principal increases of rent have occurred, and I have had very little to do with them.

13003. A new purchaser has come in?—Yes.

Mr. *T. M. Healy.*

13004. Then up to the time of the Landed Estates Court Act being passed there were no increases of rent in Ireland?—I did not say so.

Mr. *W. Kenny.*

13005. I believe the Sub-Commissioners are now supplied with maps?—They are.

13006. Do you know that mistakes have been made from time to time with reference to boundaries?—Yes; they were not supplied with maps in the beginning, and, of course, if there was not someone there on behalf of the landlord, the tenant could point out anything he liked as his own.

13007. Have mistakes in your experience occurred?—They have. I have met with mistakes.

13008. Have they had to be corrected by the Head Commission afterwards?—Yes, they have had to be corrected.

Mr. GILBERT DE L. WILLIS, called in; and Examined.

Mr. *Brodrick.*

13009. A return has been handed in by Mr. Garvey, signed by you, containing certain returns of sales of tenant right in various counties in Ireland. Would you kindly state to the Committee whether that is a comprehensive return, or what it represents?—The nature of the return is simply this: We sent out from our office in Dublin some hundreds of forms (one of which I can give you) to large numbers of land agents and landlords all over the country, and asked them to fill up this form with any cases of sales which had taken place on their properties; and that

Mr. *Brodrick*—continued.

that table which has been handed in consists of the totals of the forms that were sent back to us; it is a summary table.

13010. That is a summary table?—It is a summary table.

13011. That does not represent the whole of the sales of tenants' interests in any county?—No. I suppose there are thousands of cases that we have not heard of at all. It simply represents the number of cases that have come into our office in reply to the sending out of that form which I have just handed in to the Chairman.

Chairman.

13012. You do not represent it as showing anything like the total number of transactions that have taken place?—Oh, no; it represents the figures certified for us, under the signatures of landlords and land agents, of cases that have occurred on their particular properties; it represents nothing more than that.

Chairman—continued.

Mr. *Sexton.*

13013. How long has your "convention" existed?—Since 1887.

13014. Did you send out more than one circular?—No, I only sent out that circular.

13015. Only one?—Yes. There was a circular sent out some years ago, in 1887, I think, asking for particulars then; but none of those were made use of in compiling that table.

13016. This was made up from replies to the one circular?—Yes.

13017. The accuracy of it would depend upon the memory of all that happened since 1882 on the part of those who made the replies?—The figures have been compiled from the estates' books, I think. They bear that appearance.

Mr. WILLIAM ROCHFORT, called in; and Examined.

Mr. *Brodrick.*

12018. YOU propose, I understand, to hand in some forms showing the sums paid for tenant rights of farms held under judicial rents on estates of which you are agent?—Yes.

13019. Those are the forms which you have handed in?—Yes.

13020. What counties are included in these forms?—The counties of Cork, Tipperary, Limerick, and Dublin.

Mr. *Sexton.*

13021. Does this return cover the period of your agency for the estates with which it deals?—Yes.

Mr. *Sexton*—continued.

13022. The whole period of your agency?—Yes

13023. Different periods for different estates?—Yes; but you will observe that the returns commence only since the 1st of January, 1882.

13024. Have you been agent all that time?—On most of those estates. Yes.

13025. Does the return cover each estate within the period?—Within the period during which I have been agent.

13026. Since 1882?—Yes (*the documents were handed in*).

APPENDIX.

LIST OF APPENDIX.

PAGE

APPENDIX, No. 1.

Paper handed in by Mr. Commissioner FitzGerald, 1 May 1894 - - - - - - - - - - 655

APPENDIX, No. 2.

Paper handed in by the Right Hon. Gerald FitzGibbon, P.C., 29 May 1894 - - - - - - - - 678

APPENDIX, No. 3.

Paper handed in by Mr. W. F. Bailey, 1 June 1894 - - - - - - - - - - - - 680

APPENDIX, No. 4.

Paper handed in by Mr. W. F. Bailey, 1 June 1894 - - - - - - - - - - - - 684

APPENDIX, No. 5.

Papers handed in by the Right Hon. Gerald FitzGibbon, P.C., 5 June 1894, and by Mr. Justice Bewley, July 1894. 686

APPENDIX, No. 6.

Paper handed in by the Right Hon. Gerald FitzGibbon, P.C., 5 June 1894 - - - - - - - - 688

APPENDIX, No. 7.

Papers handed in by Mr. W. F. Bailey and Mr. Laurence Doyle, June 1894 - - - - - - - 693–694

APPENDIX, No. 8.

Paper handed in by the Hon. Mr. Justice Bewley, 16 July 1894 - - - - - - - - - - 695

APPENDIX, No. 9.

Paper handed in by the Hon. Mr. Justice Bewley, 16 July 1894 - - - - - - - - - - 696

APPENDIX, No. 10.

Paper handed in by Mr. Justice Bewley, 24 July 1894 - - - - - - - - - - - - 699

APPENDIX, No. 11.

Paper handed in by Mr. Justice Bewley - - - - - - - - - - - - - - - 704

APPENDIX, No. 12.

Paper handed in by Mr. Toler R. Garvey, 31 July 1894 - - - - - - - - - - - 722

APPENDIX, No. 13.

Paper handed in by Mr. William Rochfort, 31 July 1894 - - - - - - - - - 724

APPENDIX, No. 14.

Paper handed in by Mr. Justice Bewley, July 1894 - - - - - - - - - - 726

APPENDIX, No. 15.

Paper handed in by Mr. Justice Bewley, August 1894 - - - - - - - - - - - - 728

APPENDIX, No. 16.

Paper handed in by Mr. Justice Bewley, July 1894 - - - - - - - - - - - - - 736

APPENDIX, No. 17.

Paper handed in by Mr. Justice Bewley - - - - - - - - - - - - - - 738

APPENDIX, No. 18.

Paper handed in by the Chairman, 15 August 1894 - - - - - - - - - - - 742

APPENDIX, No. 19.

Paper handed in by the Secretary of the Land Commission, 16 August 1894 - - - - - - - - 743

APPENDIX.

APPENDIX, No. 1.

PAPER handed in by Mr. Commissioner *FitzGerald*, 1 May 1894.

A.

Form No. 27.

County

No.

LAND LAW (IRELAND) ACT, 1881.

PARTICULARS—(The following Particulars must be accurately filled up).

Name of Landlord, and Residence of Landlord, if known - - -

Rule 25.—Whenever a notice is by these rules required to be served on the Clerk of the Peace, two copies thereof shall be so served in order to enable the duplicate to be transmitted as hereinafter directed.

Rule 26.—The copy of an Originating Notice served on the Land Commission, or one of the copies served on the Clerk of the Peace, shall be endorsed with a statement of the time and mode of service of the party or parties served, and so soon as an Originating Notice has been served upon the Clerk of the Peace or the Land Commission, as the case may be, as well as upon the party or parties, the matters shall be deemed to be in Court as a case to be decided.

Rule 54.—The process servers of any county or riding, or the summons servers of any Petty Sessions district, may be employed, within their respective districts, to serve notices under the Act whether originating or otherwise, and each of them so employed shall be entitled to charge one shilling as a fee for the service or services of each notice, whether originating or otherwise, for which fee he shall be bound to serve a copy on the party or parties, and transmit by post one copy to the Land Commission, at their Office in Dublin, or two copies to the Clerk of the Peace, as the case may be, the party employing him paying the postage, if any, and he shall be further bound to endorse on the copy sent to the Land Commission. or one of the copies sent to the Clerk of the Peace, the time and mode of service of the party or parties served, and he shall be further bound to endorse on the original the time and mode of service as well of the parties as of the Clerk of the Peace or Land Commission.

Rule 55.—It shall be also the duty of process servers and summons servers, when required, to attend in Court and prove the service and posting of notices.

Served on this _____ day of _____ per _____ 188 .

Served on this _____ day of _____ per _____ 188 .

B.

Form No. 28.

County
No.

LAND LAW (IRELAND) ACT, 1881.

PARTICULARS—(The following particulars must be accurately filled up.)

Name of Landlord, and Residence of Landlord, if known - - - - - - _____

Name and Residence of Landlord's Agent, if any - - - - - - - _____

Name and Residence of Tenant - - _____

Post Office from which Tenant receives his letters - - - - - - - - _____

HOLDING—

County.	Poor Law Union.	Electoral Division.

* Name by which Lands are known on Ordinance Survey Map.

* This can be ascertained by reference to the Poor Rate Receipts or from the Clerk of the Union.

Area in Statute Measure.	Rent of Holding.	Gross Poor Law Valuation.
A. R. P.	£. s. d.	£. s. d.

[The proceedings under this Notice are intended to be carried on before the Court.]

State either "Civil Bill Court of the County," or "Land Commission," at choice of party.

ORIGINATING NOTICE of application to Court by Landlord to fix Fair Rent.

Landlord.

the Landlord of the above holding, having demanded that the Rent of the above holding should be increased to £ a year, which the Tenant has declined to accept [or having failed to come to an agreement with the Tenant as to the Rent, viz. :—

Stating specific nature of disagreement.

]

apply to the Court for an Order fixing the Fair Rent to be hereafter paid for the above holding.

To be signed by the party or parties making the application. The Tenant.

Dated this day of 188 .

Signed,

To _____

Rule 21.—

Rule 24.—Every Originating Notice shall designate the Court selected, either the Civil Bill Court or the Land Commission. It shall be first served on the opposite party, that is to say, on the landlord or tenant, or other person or persons sought to be bound by the decision of the Court, and forthwith after such service, or the last of such services, if more than one, two copies thereof shall be served on the Clerk of the Peace, or one copy on the Land Commission, according to the Court selected.

Rule 25.—Whenever a notice is by these rules required to be served on the Clerk of the Peace, two copies thereof shall be so served in order to enable the duplicate to be transmitted as hereinafter directed.

Rule 26.—The copy of an Originating Notice served on the Land Commission, or one of the copies served on the Clerk of the Peace, shall be endorsed with a statement of the time and mode of service of the party or parties served, and so soon as an Originating Notice has been served upon the Clerk of the Peace or the Land Commission, as the case may be, as well as upon the party or parties, the matter shall be deemed to be in Court as a case to be decided.

Rule 54.—The process servers of any county or riding, or the summons servers of any Petty Sessions district, may be employed, within their respective districts, to serve notices under the Act, whether originating or otherwise, and each of them so employed shall be entitled to charge one shilling as a fee for the service or services of each notice, whether originating or otherwise, for which fee he shall be bound to serve a copy on the party or parties, and transmit by post one copy to the Land Commission, at their office in Dublin, or two copies to the Clerk of the Peace, as the case may be, the party employing him paying the postage, if any, and he shall be forthwith bound to endorse on the copy sent to the Land Commission, or one of the copies sent to the Clerk of the Peace, the time and mode of service of the party or parties served, and he shall be further bound to endorse on the original the time and mode of service as well of the parties as of the Clerk of the Peace or Land Commission.

Rule 55.—It shall be also the duty of process servers and summons servers, when required, to attend in Court and prove the service and posting of notices.

Served on this ____ day of ____ per ____ 188 .

Served on this ____ day of ____ per ____ 188 .

C.

[This Form requires a shilling impressed stamp, and the original must be lodged with the Land Commission.]

Form No. 73.

County

No.

LAND LAW (IRELAND) ACT, 1881.

PARTICULARS—(The following particulars must be accurately filled up.)

Name of Landlord, and Residence of Landlord, if known - - - - - - - - _____

Name and Residence of Landlord's Agent, if any - - - - - - - - - _____

Name and Residence of Tenant - - - - _____

Post Office from which Tenant receives his Letters - - - - - - - - _____

HOLDING—

County.	Poor Law Union.	Electoral Division.

° Name by which Lands are known on Ordnance Survey Map.

Area in Statute Measure.	Rent of Holding.	Gross Poor Law Valuation.
A. R. P.	£. s. d.	£. s. d.

ORIGINATING NOTICE by Landlord and Tenant jointly to fix Fair Rent with consent to be bound by Valuer or Valuers, to be appointed by the Land Commission.

To the Land Commission.

We, the Landlord and Tenant, apply to the Court for an order fixing the Fair Rent of the above Holding, and we consent that same may be determined by Valuers to be named by the Land Commission, and that the Land Commission may make an order in accordance with the report of such Valuers, unless cause be shown to the contrary, within 10 days after the service by the Land Commission on us respectively of their order fixing the Fair Rent.

And we further agree

State agreement as to game and as to poor rates and county cess.

Dated this day of 188 .

Signature of Landlord, or of Agent or Solicitor on his behalf - - -

Signature of Tenant or of Solicitor on his behalf - - - -

[The Tenant's Signature must be witnessed by a Clergyman, by a Solicitor, by a Commissioner for taking Affidavits, or by a Poor Law Guardian, but the Witness must not be in any case a person in the employment of the Landlord.]

N.B.—An Ordnance Map, with the boundaries of the above holding coloured thereon, should accompany this form at the time of lodgment in the Land Commission.

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. _____

and Mr. _____ to report upon the Fair Rent of the above Holding.

Dated this day of 188 .

By Order,

Secretary.

REPORT OF VALUERS.

We, the Valuers named by the Land Commission, having, to the best of our skill and ability, inspected and examined the above Holding, and all alleged improvements thereon, and having had regard to the interests of Landlord and Tenant respectively, and having considered the circumstances of the case, Holding, and District, do hereby REPORT that in our opinion the Fair Rent of the above Holding should be the annual sum of

Dated this day of 188 .

Signature of Valuer _____

Do. _____

Form No. 79.

D.

County

No.

LAND LAW (IRELAND) ACTS, 1881 and 1887.

PARTICULARS—(The following particulars must be accurately filled up.)

Name of Landlord, and Residence of Landlord, if known - - - - - - _____

Name and Residence of Landlord's Agent, if any - - - - - - - _____

Name and Residence of Lessee - - - _____

Post Office from which Lessee receives his Letters - - - - - - - _____

HOLDING—

HOLDING—

County.	Poor Law Union.	Electoral Division.

* Name by which Lands are known on Ordnance Survey Map.		
Area in Statute Measure.	Rent of Holding.	Gross Poor Law Valuation.
A. R. P.	£. s. d.	£. s. d.

* This can be ascertained by reference to the Poor Rate Receipts or from the Clerk of the Union.

[The proceedings under this Notice are intended to be carried on before the Court.]

State either "Civil Bill Court of the County," or "Land Commission," at choice of party.

ORIGINATING NOTICE of Application by Lessee, to fix Fair Rent.

I, the Lessee, being in *bonâ fide* occupation of the above holding, apply to the Court for an order fixing the fair rent to be hereafter paid for the above holding, which is held under a Lease * bearing date the day of made by to for the Term of at the yearly rent of £

Insert these particulars accurately.

Dated this day of 18 .

Signed,

To the Landlord.

To be signed by or on behalf of the party or parties making the application or his or their Solicitor.

* The term Lease includes an Agreement for a Lease.

[This Schedule is to be filled up by the Lessee when the Poor Law Valuation of the holding is £10 or over £10 a year.—*See* Rule 108.]

SCHEDULE OF IMPROVEMENTS

in respect of which evidence is intended to be produced, or which are intended to be relied on by the Lessee as having been made by him or his predecessors in title, with the dates at which the same were made according to the best of the Lessee's knowledge and belief.

MODE OF SERVICE OF ORIGINATING NOTICE.*

Served on this per day of 18 .

The opposite party.

Served on this per day of 18 .

The Land Commission or Civil Bill Court, as the case may be.

* *See* Rules 24, 25, 26, 27, 28, 29, 35, 57, 58, 108, 109.

Form, No. 83.

E.

County

No.

LAND LAW (IRELAND) ACTS, 1881 AND 1887.

PARTICULARS—(The following particulars must be accurately filled up).

Name of Head Landlord, and Residence, if known - - - - - - - -

Name and Residence of Head Landlord's Agent, if any - - - - - - -

Name and Residence of Middleman - -

Post Office from which Middleman receives his Letters - - - - - -

Part of HOLDING not Sublet.

County.	Poor Law Union.	Electoral Division.

* This can be ascertained by reference to the Poor Rate Receipts, or from the Clerk of the Union.

* Name by which Lands are known on Ordnance Survey Map -	

Area in Statute Measure of part not sublet.	Rent under Lease.	Gross Poor Law Valuation of entire lands under Lease.
A. R. P.	£. s. d.	£. s. d.
Of part sublet.		
A. R. P.		

State either "Civil Bill Court of the County," or "Land Commission," at choice of party.

[The Proceedings under this Notice are intended to be carried on before the Court.]

ORIGINATING NOTICE by Middleman who claims to be entitled to surrender his estate in a holding part whereof is sublet, of application to ascertain and determine the Fair Rent of the part not sublet.

1. I hold under a lease bearing date the day of

made by

to

for the term of at the yearly rent of £

the lands of

containing A. R. P., of which the lands specified in the heading hereof form a part.

2. The rent paid by the sub-tenants of said lands has been reduced by or with the sanction of the Court, so that, when added to what would be the fair rent of the part of the holding which is not sublet, it is of less amount than the rent payable by me.

3. I apply to the Court to ascertain and determine, for the purpose of a surrender, the Fair Rent of the part not sublet.

Dated this day of 18

* To be signed by or on behalf of the party or parties making the application, or his or their Solicitors.

* Signed,

To

The Head Landlord of the above holding.

F.

Form No. 1.

County

No.

REDEMPTION OF RENT (IRELAND) ACT, 1891.

PARTICULARS.—The following particulars must be accurately filled up—

Name of Lessor or Grantor, and Residence, if known - - - - - - - -

Name and Residence of Lessor's or Grantor's Agent, if any - - - - - -

Name and Residence of Lessee or Grantee -

Post Office from which Lessee or Grantee receives his letters - - - - -

HOLDING—

HOLDING—

County.	Poor Law Union.	Electoral Division.

Name by which lands are known on Ordnance Survey Map.

Area in Statute Measure.	Rent of Holding.	Gross Poor Law Valuation.
A. R. P.	£. s. d.	£. s. d.

ORIGINATING NOTICE of application by a Lessee or Grantee to redeem his rent, and for an advance, under the Land Purchase Acts, to carry out such redemption, or in case of the Lessor or Grantor not signifying his consent thereto in the prescribed manner and within the prescribed time, to have a fair rent fixed.

I,
the before-named Lessee (*a*), make oath and say as follows :—

(*a*) Or Grantee.

1. The foregoing particulars of the holding are true to the best of my knowledge and belief.

2. I am in *bonâ fide* occupation of the said holding, which is held under a lease (*b*) bearing date the day of , made by to for the term of at the yearly rent of (*c*)

(*b*) Or Grant.

(*c*) If renewable state so, and particulars of renewal fines.

3. I have been in occupation of the said holding and paying rent therefor since the year 18 and (the said (*d*) is in my (*e*) possession).

(*d*) Lease or grant.

(*e*) If not, state in whose possession.

4. There is not any person in occupation of the said holding as Tenant or otherwise save as mentioned in the following Schedule :—

Names of the persons in occupation as under-tenants or otherwise.	Area in Statute Measure.	Rent (if any) payable by such occupiers.	When payable.	Tenure or nature of occupancy.
	A. R. P.	£. s. d.		

If there are no under-tenants fill in the word "none" where marked***

5. There is not any charge or incumbrance affecting my interest in the said holding save those specified in the following Schedule :—

Schedule containing particulars of Mortgages, Charges created by deposit of Lease or otherwise, or Charges in favour of the Commissioners of Public Works in Ireland affecting the Tenant's interest in the Holding.

Date.	Name and Address of Incumbrancer.	Particulars of Incumbrance, Mortgage, or otherwise.	Principal Sum due.
			£. s. d.

If there are no incumbrances, fill in the word "none" where marked thus ***

6. I apply to the Court of the Land Commission to redeem the said rent, and for an advance under the Land Purchase Acts of the whole capital sum payable by me for such redemption.

7. I have not obtained from or (except by this Notice) applied to the Irish Land Commission for an advance of any sum for the purchase of any land,

(a) Or Grantee.

8. In case the said Lessor (a) shall not signify his consent to such redemption in the prescribed manner, and within the prescribed time, I apply to the said Court to be deemed a tenant of a present tenancy in the said holding, and for an order fixing the fair rent to be hereafter paid for same.

SWORN before me this day of 189 ,
at
in the County of and I know the Deponent, *the whole of the foregoing originating notice and affidavit having been first read over to the said*
*by** *and the said*
appeared perfectly to understand the same, and made h mark thereto in my presence.

The words in *italics* may be struck out unless the Deponent be a Marksman.

* State by whom.

(a) Or Grantor.

If the Lessee (a) wishes to be represented in the proceedings by a solicitor, here insert name and address of such solicitor.

Name
Address

G.

THE IRISH LAND COMMISSION.

WHEREAS the Irish Land Commission sealed and promulgated an Order of Delegation as follows, that is to say :—

_____ *day the* _____ *day of* _____ 18__.

Sub-Commission, No. .

The Irish Land Commission hereby appoints that

Esquire,
hereinafter called the Legal Assistant Commissioner, together with any two of the following persons, namely,

Esquires, hereinafter called Lay Assistant Commissioners, shall form and be a Sub-Commission for the following District , namely,

The Irish Land Commission hereby delegates to the Legal Assistant Commissioner and to any two of the said Lay Assistant Commissioners, being a Sub-Commission hereby formed and constituted as aforesaid, power to hear, decide, and to make orders in the cases under the Land Law (Ireland) Acts of 1881 and 1887, and all Acts incorporated therewith, within the said District , which may from time to time be referred by the Irish Land Commission for decision ; together with all powers (except as to appeals) which the Irish Land Commission itself possesses for the purpose of hearing, deciding, and making orders in all such cases as aforesaid.

The powers hereby delegated shall be in force until the making of an order varying or rescinding these presents.

The rescinding of these presents shall not, unless otherwise ordered, prejudice any pending case, but such case may be continued and dealt with by any subsequent Sub-Commission as if these presents had not been rescinded.

And whereas one of the persons above-named, is
Now the Irish Land Commission hereby appoints that the said Legal Assistant Commissioner, together with any one of the remaining Lay Assistant Commissioners, shall form and be a Sub-Commission for the above-mentioned District , and hereby delegates to the said Legal Assistant Commissioner, and any one of the Lay Assistant Commissioners, all the Powers which by the above recited Order were delegated to the Legal Assistant Commissioner and any two of the Lay Assistant Commissioners.

And the Powers hereby delegated shall be in force from the date hereof until the day of 18 .

Dated this day of 18 .

H.

THE IRISH LAND COMMISSION.

_____ *day the* _____ *day of* _____ 18__

Sub-Commission, No. .

The Irish Land Commission hereby forms and appoints a Sub-Commission for

which

which shall consist of the following Assistant Commissioners, namely :—

(Legal Assistant Commissioner) and

The Irish Land Commission delegates to the above-mentioned Sub-Commission power to hear, decide, and make orders in the cases under the Land Law (Ireland) Acts of 1881, 1887, and all Acts incorporated therewith, which may from time to time be referred thereto by The Irish Land Commission for decision ; together with all powers (except as to appeals) which The Irish Land Commission itself possesses for the purpose of hearing, deciding, and making orders in all such cases as aforesaid.

The powers hereby delegated shall be in force until the making of an order varying or rescinding these presents.

The rescinding of these presents shall not, unless otherwise ordered, prejudice any pending case, but such case may be continued and dealt with by any subsequent Sub-Commission as if these presents had not been rescinded.

The Land Commission reserves power to authorise the exercise by any two members of the Sub-Commission of the powers hereby delegated, and no pending proceedings shall abate or be in any way affected by such authorisation.

I.

THE IRISH LAND COMMISSION

_____ *day the* _____ *day of* _____ 189 __.

Sub-Commission, No. .

The Irish Land Commission hereby appoints that

Esquire,

hereinafter called the Legal Assistant Commissioner, together with any two of the following persons, namely,

Esquires, hereinafter called Lay Assistant Commissioners, shall form and be a Sub-Commission for the following District , namely,

The Irish Land Commission hereby delegates to the Legal Assistant Commissioner and to any two of the said Lay Assistant Commissioners, being a Sub-Commission hereby formed and constituted as aforesaid, power to hear, decide, and make orders in the cases under the Land Law (Ireland) Acts of 1881 and 1887, and all Acts incorporated therewith, within the said District , which may from time to time be referred by The Irish Land Commission for decision ; together with all powers (except as to appeals) which The Irish Land Commission itself possesses for the purpose of hearing, deciding, and making orders in all such cases as aforesaid

The powers hereby delegated shall be in force until the making of an order varying or rescinding these presents.

The rescinding of these presents shall not, unless otherwise ordered, prejudice any pending case, but such case may be continued and dealt with by any subsequent Sub-Commission as if these presents had not been rescinded.

J.

LAND LAW (IRELAND) ACTS.

Judicial Rents.

IRISH LAND COMMISSION.

Circuit No. 49.—Sittings commencing on the 4th day of January 1894.

The following Sittings have been arranged, and Lists will be issued as soon as possible for the several Counties.

Note.—Parties are required to bring in and have in Court their stamped Originating Notices.

Lists of the Cases to be heard in each County can be obtained about Three Weeks before the date on which the Sub-Commission sits, by applying to the Secretary, 24, Upper Merrion-street, Dublin.

MAPS.—Notice.—The Commissioners will in future provide maps for the use of the Assistant Commissioners, so that parties will not be required to lodge copies of the Ordnance Sheets at the hearing as heretofore.

Note.—When Copies of Orders Fixing Fair Rents are required, it will be necessary to quote the "Record Number" correctly, as given on this List. Forms of Requisitions can be obtained on application to the Secretary, 24, Upper Merrion-street, Dublin.

(By Order),
John H. Franks, Secretary,
24, Upper Merrion-street, Dublin.

Sub-Commission, No. 1.

Chairman.—W. F. Bailey.

Deputy Registrar.—J. N. Mostyn.

County.	Place where Sitting will Commence.	Names of Assistant Commissioners.	Date of first Court Sitting.
Monaghan, Longford, Armagh, Cavan, Louth, Down, Meath, Antrim South, Fermanagh, Londonderry	Armagh	T. MacAfee and C. W. Thompson	February
	Belfast	T. Davidson and J. Golding	January
	Cavan	J. Rice and S. Byers	January

Sub-Commission, No. 2.

Chairman.—L. Doyle.

Deputy Registrar.—John Downing.

County.	Place where Sitting will Commence.	Names of Assistant Commissioners.	Date of first Court Sitting.
Kerry, Cork, Limerick, Tipperary, Waterford, Clare, and part of Leinster	Macroom	E. R. Bayly and J. D. Boyd	4 January
	Tralee	J. Haughton and J. J. O'Shaughnessy	January
	Mitchelstown	C. R. Butler and W. Walpole	4 January

Sub-Commission, No. 3.

Chairman.—E. Greer.

Deputy Registrar.—Wm. MacGeagh.

County.	Place where Sitting will Commence.	Names of Assistant Commissioners.	Date of first Court Sitting.
Galway, Mayo, Sligo, Roscommon, Leitrim, Tyrone, Londonderry, Donegal	Manorhamilton	R. Garland and W. Jeffcott	January
	Galway	H. Johnston and J. H. M'Connell	January
	Londonderry	C. O'Keeffe and T. A. Dillon	January

Unions Listed during following Months.

January.	February.	March.	——	——	——	——

January.	February.	March.	——	——	——	——

January.	February.	March.	——	——	——	——

K.

(Copy.)

My Dear Lord Chancellor, Dublin, 24th March, 1894.

May I ask you to kindly consider the following subjects, which my colleagues have requested that I should bring under your notice with reference to the number of applications to fix judicial rents pending in the Civil Bill Courts, and to the practice of those courts in a matter which I will subsequently refer to.

The first has merely reference to a statistical question. Having regard to the near determination of the first Statutory term, and also with a view to the pending inquiry before a Select Committee of the House of Commons, the officers of this Department in checking the books have called the attention of the Commissioners to the fact that, while the outstanding applications to the Land Commission to fix judicial rents have continuously diminished since 1886 (from over 58,000 on that date to 3,000 on the 31st December, 1893), the records appear to show an increasing number of undisposed-of cases in the Civil Bill Courts, thus in 1888 the undisposed-of cases appeared to be 2,992; in 1889, 4,169; in 1890, 4,309; in 1891, 4,461; in 1892, 4,632; and on the 31st December, 5,022. The Commissioners doubt the accuracy of these figures and are inclined to think that the outstanding cases in the Civil Bill Courts have been gradually reduced since 1888.

But to give a possible reason for the statistics quoted, the 54th of the rules of the Land Commission, issued in 1883, in accordance with Section 50 (1) (*c*) of Land Law Act of 1881 ("to take effect and be in force in the several Civil Bill Courts in Ireland") provided that:—

> "It shall be the duty of the clerk of the peace to enter every originating notice in a book, to be called the 'Land Law Act Case Book,' in consecutive numbers, and also to transmit the duplicate notice received by him to the Secretary of the Land Commission; and every notice served on the clerk of the peace subsequently in the same case, shall be likewise noted in the said book under the same number, and the duplicate thereof shall be transmitted to the Secretary of the Land Commission. It shall be the duty of the clerk of the peace to forthwith transmit to the Secretary of the Land Commission certified copies of all orders made by the judge of the Civil Bill Court under the Act."

This rule has been amended by adding at the end thereof, "or the Landlord and Tenant (Ireland) Act, 1870, or any Act or Acts incorporated with the said Acts or either of them." Rules of 4th July 1887.

It appears to the Commissioners that it is possible that the seeming present arrear may be due to the clerks of the peace having, in many instances, omitted to transmit to this office certified copies of the orders made by their respective county court judges in cases which came before them, and consequently that cases disposed of have not been entered in the books of this Department.

The Land Commissioners have no jurisdiction over the officers of the county courts, and although on several occasions they have called the attention of the officers responsible to the matter, they are unable to require compliance with the rule in question. I would therefore suggest that it would be advisable to obtain the co-operation of the different county court judges in the matter with a view to obtaining from each clerk of the peace a correct return showing exactly how many fair rent cases actually remain to be disposed of in the Civil Bill Court of the county in which he acts. Difficulty will, without doubt, arise in endeavouring to ascertain how matters stand in the County Cork Civil Bill Courts, owing to the fire at the Cork Court House, but it is possible a means may be suggested to arrive at the exact number of applications to fix rents now pending.

I send for your information a return which has been prepared from the information on record in this office, showing by counties to 31st December, 1893, the number of applications to fix fair rents lodged in the Civil Bill Court, the number disposed of, and the arrear outstanding on the date in question.

The second subject which I desire to bring under your notice has reference to a matter in which there is apparently some difference in the existing practice of this Department and some of the Civil Bill Courts with regard to the reports and valuations made respectively by the Lay Assistant Commissioners and by the valuers for some of the county court judges, as to the holdings inspected by them.

Owing to representations made by the Land Commissioners in 1890, the county court rules of that year (Order 25) contained directions to the valuers for the county courts, that in making their reports they should fill up and sign the form thereby prescribed, and also prepare a map of the holdings reported upon, and should forward same to the clerk of the peace.

The form of report then prescribed was practically identical with that which had been adopted by the Land Commissioners for the reports of the Lay Assistant Commissioners.

In accordance with the 6th of the rules made by the Land Commission on the 16th January, 1890, it is the duty of the clerk of the peace, when an appeal is taken from the decision of the Civil Bill Courts, to transmit to the Land Commission, with the notice of appeal, the inspection report and the map of the holding made by the court valuer.

In Land Commission cases the reports of the Lay Assistant Commissioners accompanied by the map to which they refer, so soon as the judicial rent fixed by the Sub-Commission has been announced, are filed in this Department, and are open to the inspection of the parties or their solicitors, and copies of them can be obtained if required. Similarly, when appeals are pending, whether from a Sub-Commission or the Civil Bill Court, the parties are at liberty to inspect and obtain copies of the reports of the valuers for the Land Commission, or of the report of the valuer for the Civil Bill Court.

The Commissioners have, however, been informed that applications to the clerks of the peace, prior to the lodging of an appeal, for copies of valuers' reports have been refused on the ground that such reports are confidential.

The Commissioners adopt the course of giving free access to all reports when lodged in their Department, because they are of opinion that the parties concerned, when considering the question as to whether an appeal should be brought, prosecuted, or withdrawn, should have means of knowing what facts have been stated in these reports with reference to the area and situation of the holdings inspected, the improvements claimed, the valuation made by experienced valuers, and other circumstances which the reports must indicate. They also believe that the knowledge that their reports are thus open to inspection tends to ensure greater accuracy and attention to details on the part of the officers who, in these reports, set forth the result of their inspection.

Having regard to the facts as explained, perhaps you will kindly see your way to suggesting to the county court judges that it would be advisable that a general direction should be issued to the clerks of the peace of the several counties, that they should, when a rent has been fixed, allow the valuers' reports and maps to be inspected by the parties, and to furnish copies of same when required, even though the parties may not have appealed.

I would also ask you to request the county court judge to direct the clerks of the peace to be more careful in drawing up the orders under the Land Law (Ireland) Acts. In a very large number of cases that have come before the Land Commission on appeal from the county court in recent years, serious errors have been found in such orders. In numerous cases of applications by leaseholders under the Land Acts of 1887 and 1881, to have a fair rent fixed, the orders are on a wrong form, and do not contain the necessary adjudication that the lessee is to be deemed a tenant of a present tenancy, and in other cases the acreage or former rent of the holding is incorrectly stated.

In appeals in cases of claims for improvements under the Landlord and Tenant Act of 1870, it sometimes turns out that no order of the county court judge is forthcoming, and it would appear from correspondence with the Land Commission, that some clerks of the peace are under the impression, notwithstanding the language of the 19th Section of the Landlord and Tenant Act of 1870, that there is no obligation on them to draw up any decree in such cases unless it is prepared by the solicitor of one of the parties.

I am, &c.

(signed) *E. T. Bewley.*

The Right Honourable,
The Lord Chancellor for Ireland.

L.

Improvements.—Adams *v.* Dunseath, 10 L. R. G.; Walsh *v.* Vincent, 23 G. L. T. R., 17; Mollan *v.* Keeran, 2 G. and R., 27.

Town Parks.—Killen *v.* Lambert, 10 L. R. G., 362; Nelson *v.* Headfort, 18 L. R. O., 407; McNamara *v.* McNamara, 32 L. R. G., 1; Caledon *v.* Archer, 18 G. L. T. R., 4; Perry & Co. *v.* Goodbody, C. A., Judgment, February 1894.

Pasture.—Westropp *v.* Elligott, 9 App. Cases, 815; O'Brien *v.* White, 16 L. R. G., 15; Fillham *v.* Ganz, 26 L. R. G., 678; Harper *v.* Davies, 12 L. R. G., 23; Drogert *v.* Hughes, 18 G. L. T. R., 37; Holmes *v.* Lauder, 22 L. R. G., 47; Eiren *v.* Hamilton, 28 L. R. G., 464; Byrne *v.* Hill, 30 L. R. G., 603.

Demesne Lands.—Hill *v.* Antrim, 5 S. L. T. R., 70; Griffin *v.* Taylor, 16 L. R. G.; Magner *v.* Hawkes, 32 L. R. G., 285; Spencer *v.* Tedcastle, 31 L. R. G., 411; Moore *v.* Batt, 32 L. R. G., 68.

Residental Holdings.—Doyle *v.* Campbell, G. R. 9, C. L., 95; Carr *v.* Nunn, 7, G. L. T. R., 26.

Mill Holdings.—Foster *v.* Doyle, 30 L. R. G., 623.

Sub-letting.—M'Conchy *v.* Robertson, 18 L. R. G., 483; Kennedy *v.* Essex, 28 L. R. (G.), 586; Wakefield *v.* Robinson, 30 L. R. G., 547; Thompson *v.* Rossmore, 32 L. R. G., 431; Bowman *v.* Catherwood, 28 L. R., 470; White *v.* White, C. A., Judgment, 1 February 1894; Cortallis *v.* Ward, C. A., Judgment, April 1894; Cowell *v.* Buchanan, 20 L. R. G., 375.

M.

FORMS of REPORT used by the SUB-COMMISSIONERS from 1881 to the Present Time.

No.

1. Blue Form.—In use from April 1882 until 20th May 1887.
2. White Form.—Used by Court Valuers attached to Sub-Commissions during period from September to December 1882.
3. White Form.—From 20th May 1887 to 31st May 1888.
4. Pink Form.—From 1st June 1888 to 23rd July 1888.
5. Pink Form.—From 23rd July 1888 to end of December 1888.
6. Pink Form.—From January 1889 to April 1889.
7. Pink Form.—From April 1889 to April 1891.
8. Pink Form.—From April 1891 to end of January 1893.
9. Pink Form.—From February 1893 to present date, being still in use.

13th April 1894.

1.

IRISH LAND COMMISSION.

Name of Landlord _____

Name of Tenant _____

County of _____

Record No. _____

SCHEDULE OF IMPROVEMENTS.

Tenant's Improvements which have been taken into consideration.	Landlord's Improvements which have been taken into consideration.

Dated this _____ day of _____, _____ 18___.

Signature of Assistant Commissioner _____

Compared.

A true copy.

2.

IRISH LAND COMMISSION.—VALUERS' REPORT as to FAIR RENT.

Landlord.	Tenant.	Poor Law Valuation.	Present Rent.

County.	No.	Townland.	Area.	County Cess, per £.	Poor Rate, per £.

Short notes as to the situation, elevation, aspect, climate, roads, fences. soil, waste, buildings (distinguished between slated and thatched).

Landlord's improvements allowed.	Tenant's improvements allowed.

Other circumstances considered worthy of notice.

Arrangement between Landlord and Tenant as to Local Taxes, taken into account in fixing the Fair Rent.

We fix the Fair Rent at - - - £.

Signatures of Valuers.

Dated this day of 18 .

3.

FORM of SCHEDULE referred to in Rules, 20th day of May 1887.

IRISH LAND COMMISSION.

Particulars of Holding to be filled in and signed by the Lay Assistant Commissioners "after Inspection." In case of a difference of opinion, a separate Form is to be filled in and signed by each Assistant Commissioner.

County_____

Record No. _____

Tenant_____

Landlord _____

	Answers.
1. Improvements allowed to Tenant to be stated in detail.	
2. Improvements allowed to Landlord.	
3. Buildings, if Landlord's, fair annual value.	
4. Character of holding, grazing, tillage, or mixed.	
5. If grazing, carrying power.	
6. If tillage, character of soil.	
7. If mixed, area of tillage, and character of soil, and area of pasture, and carrying power.	
8. Situation as to Markets and Railways.	
9. Special incidents of holding.	
10. Local Rates.	

Compared.

A true copy.

_____

4.

FORM of SCHEDULE referred to in Rules, 20th day of May 1887.

IRISH LAND COMMISSION.

Particulars of Holding to be filled in and signed by the Lay Assistant Commissioners "after inspection." In case of a difference of opinion, a separate form is to be filled in and signed by each Assistant Commissioner.

County_____ Tenant_____

Record No._____ Landlord_____

1. Improvements allowed to Tenant to be stated in detail.
2. Ditto - ditto - Landlord.
3. Buildings, if Landlord's, fair annual value.
4. Character of Holding :—
   - (*a*) Grazing—Carrying power, and proportion suitable for fattening, dairy or store pasture.
   - (*b*) Tillage—Character of soil, and proportion of each class, 1st, 2nd, or 3rd.
   - (*c*) If Mixed—Area of tillage and character of soil, and area and description of pasture, and carrying power.
5. Situation as to Markets and Railways.
6. What Value, if any, has been added for proximity.
7. What Amount, if any, has been deducted in consequence of remote position.
8. Special incidents of holding.
9. Local Rates.

_____

_____

_____day of_____ 188 .

5.

(Letters designating Class or Classes.)

The within Schedule, and the above designation of class of holding according to the Schedule, have, in my opinion, been accurately filled up.

Signature of Legal Assistant Commissioner.

_____ day of _____ 18 .

AMENDED FORM of SCHEDULE referred to in Rule, 23rd day of July 1888.

IRISH LAND COMMISSION.

Particulars of Holding to be filled in and signed by the Lay Assistant Commissioners, "after inspection." In case of a difference of opinion, a separate form is to be filled in and signed by each Assistant Commissioner.

County _____ Tenant _____

Record No. _____ Landlord _____

1. Character of Holding :—The land in a holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be carefully filled up according to the facts. The acreage of each class of land found in the holding should be set out in the column given for the purpose, and this acreage should be marked off and coloured with a distinct colour on the Ordnance Survey Map of the holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible.

SCHEDULE of CLASSES of LAND.

	Areas. A.	R.	P.
Permanent Pasture Lands :—			
A. Fattening Land			
B. Dairy Land			
C. Store Pasture, suitable for feeding young cattle and sheep			
D. Rough and mountain grazing			
Tillage Lands :—			
E. 1st class ; loamy soil of good depth			
F. 2nd „ medium soil			
G. 3rd „ poor thin soil			
H. 4th „ reclaimed moor or mountain			
I. Waste (Description).			
Total acreage			

2. Carrying power of Pasture for six summer months.
3. Winterage carrying power, if any.
4. Improvements allowed to Tenant, and found to exist after inspection, to be stated in detail.
5. Ditto - ditto, allowed in like manner to Landlord.
6. Buildings, if Landlord's, fair annual value.
7. Cultivation—Is holding used in manner best suited to its productive power, and does the soil show traces of improvement or of deterioration ?
8. Situation as to Markets and Railways.
9. What Value, if any, has been added for proximity ?
10. What Amount, if any, has been deducted in consequence of remote position ?
11. Special incidents of holding.
12. Local Rates.

_____ day of _____ 18 .

6.

If Tenancy has been purchased since the Land Act, 1870, give date and amount of Purchase Money on each sale.

Signature of Legal Assistant Commissioner.

day of 18 .

Amended Form of Schedule referred to in Rule, 23rd day of July 1888.

IRISH LAND COMMISSION.

Particulars of Holding to be filled in and signed by the Lay Assistant Commissioners "after inspection." In case of a difference of opinion, a separate form is to be filled in and signed by each Assistant Commissioner.

No. of Ordnance Sheet

County Tenant

Record No. Landlord

1. Character of Holding.—The land in a holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be carefully filled up according to the facts. The acreage of each class of land found in the holding should be set out in the column given for the purpose, and this acreage should be marked off and coloured with a distinct colour on the Ordnance Survey Map of the Holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible. The record number of the Holding should in each case be marked on the Map, and where more than one Holding is marked on the Map, a Schedule of Holdings, with the record numbers, and tenants' names, is to be written on the right-hand margin of the Map. The exterior boundaries of each holding must be carefully marked on the Map.

SCHEDULE OF CLASSES OF LAND.

	Areas. A. R. P.
Permanent Pasture Lands:	
A. 1st Class, or Fattening Land (dark green)	
B. 2nd „ or Dairy Land (yellow)	
C. Store Pasture, suitable for feeding young cattle and sheep (red)	
D. Rough and mountain grazing (brown)	
E. Permanent meadow (blue)	
Tillage Lands (uncoloured):	
F. 1st Class; loamy soil of good depth	
G. 2nd „ medium soil	
H. 3rd „ poor thin soil	
I. 4th „ reclaimed moor or mountain	
K. Waste (Description)	
Total acreage	

2. Carrying power of pasture for six summer months.
3. Winterage carrying power, if any?
4. Improvements allowed to Tenant, and found to exist after inspection, to be stated in detail.
5. Do. do. allowed in like manner to Landlord.
6. Buildings, if Landlord's fair annual value.
7. Cultivation—Is Holding used in manner best suited to its productive power, and does the soil show traces of improvement or of deterioration?
8. Situation, as to Markets and Railways.
9. What Value (if any) has been added for proximity?
10. What amount (if any) has been deducted in consequence of remote position?
11. Special incidents of Holding.
12. Local Rates.

day of 18 .

7.

Amended Form of Schedule referred to in Rule, 23rd day of July 1888.

IRISH LAND COMMISSION.

Particulars of Holding to be filled in and signed by the Lay Assistant Commissioner "after inspection." In case of a difference of opinion, a separate Form is to be filled in and signed by each Assistant Commissioner.

No. of Ordnance Sheet_____

County_____ Tenant _____

Record No._____ Landlord_____

Date upon which Holding inspected _____ day of_____ 18 .

1. Character of Holding.—The land in a Holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be carefully filled up according to the facts. The acreage of each class of land found in the Holding should be set out in the column given for the purpose, and this acreage should be marked off, and coloured with a distinct colour on the Ordnance Survey Map of the Holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible. The record number of the Holding should in each case be marked on the Map, and where more than one holding is marked on the Map a Schedule of holdings, with the record numbers, and tenants' names, is to be written on the right-hand margin of the Map. The exterior boundaries of each holding must be carefully marked on the Map.

SCHEDULE OF CLASSES OF LAND.

	Areas. A.	R.	P.
Permanent Pasture Lands :			
A. 1st Class or Fattening Land (dark green)			
B. 2nd „ or Dairy Land (yellow)			
C. Store Pasture, suitable for feeding young cattle or sheep (red)			
D. Rough and mountain grazing (brown)			
E. Permanent meadow (blue)			
Tillage Lands (uncoloured) :			
F. 1st Class ; loamy soil of good depth			
G. 2nd „ medium soil			
H. 3rd „ poor thin soil			
I. 4th „ reclaimed moor or mountain			
K. Waste (Description)			
Total acreage			

2. Carrying power of pasture for six summer months.

3. Winterage carrying power, if any.

4. Improvements allowed to Tenant, and found to exist after inspection, to be stated in detail.

5. Do. do. allowed in like manner to Landlord.

6. Buildings, if Landlord's, fair annual value.

7. Cultivation—Is holding used in manner best suited to its productive power, and does the soil show traces of improvement or of deterioration?

8. Are all the crops grown sold or consumed on the Holding by stock, or are they partly sold and partly consumed? and if so, state in what proportion, if possible.

9. Situation as to Markets and Railways.

10. What Value (if any) has been added for proximity?

11. What Value (if any) has been allowed for free Turbary, commonage, or mountain grazing?

12. What amount (if any) has been deducted in consequence of remote position?

13. Local Rates=Average Poor Rate in £.
„ County Cess in £.

14. Special

14. Special incidents of Holding, and general observations.

15. Who attended inspection on behalf of Landlord?

Do., on behalf of Tenant?

To be signed by Lay Assistant Commissioners. _____

_____

Dated this day of 18 .

16. If Tenancy has been purchased since the Land Act, 1870, give date and amount of Purchase Money on each Sale.

17. Date at which Rent was last changed, and amount of change.

To be Signed by Legal Assistant Commissioner.

8.

Particulars of Holding taken into consideration in fixing the Judicial Rent.

IRISH LAND COMMISSION.

The particulars of the Holding are to be filled in and signed by the Lay Assistant Commissioners "immediately after inspection, and before the Judicial Rent is determined with the Legal Assistant Commissioner." In case of a difference of opinion, a separate form is to be filled in and signed by each Assistant Commissioner. All areas to be given in Statute Measure.

No. of Ordnance Sheet _____

County _____ Tenant _____

Record No. _____ Landlord _____

Date upon which holding inspected _____ day of _____ 189 .

Who attended inspection on behalf of Landlord?

Ditto, on behalf of Tenant?

1. Character of Holding.—The land in a holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be carefully filled up according to the facts. The acreage of each class of land found in the holding should be set out in the column given for the purpose, and this acreage should be marked off and coloured with a distinct colour on the Ordnance Survey Map of the holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible. The record number of the holding should in each case be marked on the Map, and where more than one holding is marked on the Map a Schedule of holdings with the record numbers, and tenants' names is to be written on the right-hand margin on the Map. The exterior boundaries of each holding must be carefully marked on the Map.

(1.) SCHEDULE OF CLASSES OF LAND.

	Area in Statute Measure. A. R. P.
Permanent Pasture Lands :—	
A¹. 1st Class Fattening Land (green)	
A². 2nd „ „ „ „	
C¹. 1st „ Store Pasture (red)	
C². 2nd „ „ „ „	
C³. 3rd „ „ „ „	
D. Inferior Grazing (brown)	
E¹. 1st Class Permanent Meadow (blue)	
E². 2nd „ „ „ „	
Tillage Lands (uncoloured) :—	
F. 1st Class; Soil of good depth	
G. 2nd „ medium Soil	
H. 3rd „ poor Soil	
I. 4th „ very inferior Soil	
K. Waste (Description),	
Total acreage	

State generally the prevailing soils and sub-soils :—

Permanent Pasture only :

2. For what purpose is the pasture most suited ?

3. Carrying power in sums or collops of permanent pasture for the grazing season, stating the months during which that season usually continues, and how hay is provided.

Cultivation. Land under Tillage or Land worked in rotation, including that part of the Meadow or Pasture which is only of a temporary character.

4. Give approximate area under each crop for the year in which inspected and the rotation of crops stated to be, or which appears to be, followed.

5. Is holding used in manner best suited to its productive power, and does the soil show traces of improvement or of deterioration, and to whom is the improvement or deterioration to be attributed ?

6. Does the holding or any part of it require to be drained, and if so, how much of the holding ? Mark part requiring drainage on map by thin cross parallel black lines. Is there any impediment to drainage being carried out, such as want of outfall, difficulty of providing material, &c. ?

7. Improvements (excluding buildings), whether made by landlord or tenant, which are at present a *bonâ fide* benefit and suitable to the holding and are found to exist on inspection, to be stated in detail.

8. Buildings. If tenant's, state so ; if landlord's, specify particulars of same ; state fair annual value, whether they have been kept in repair, and by whom.

9. Situation as to Markets, Railways, and County roads.

10. What value (if any) has been added for proximity, or what amount (if any) has been deducted in consequence of remote position.

11. Give particulars of any right of turbary, commonage, mountain grazing, or seaweed, and state whether turbary is inside or outside holding.

12. Local Rates.—Average Poor Rate in £.
,, County Cess in £.

13. Special incidents of holding such as aspect, elevation, and water supply, and general observations.

To be signed by Lay Assistant Commissioners _____ _____ day of 189

14. The following improvements included in enumeration in paragraph No. 7 were made or acquired by the tenant or his predecessors in title and are exempted from rent.

15. What value (if any) has been added for any of the rights referred to in answers to Query No 11 ?

16. Upon

16. Upon what assumption, with regard to the respective liabilities of landlord and tenant as to rates and taxes mentioned in answers to Query No. 12, has the judicial rent been fixed?

To be signed by Legal and Lay Assistant Commissioners.

17. If tenancy has been purchased since the Land Act, 1870, give date and amount of purchase money on each sale.

18. What changes of rent have been proved in evidence?

To be signed by Legal Assistant Commissioner alone.

9.

PARTICULARS of Holding taken into consideration in fixing the Judicial Rent.

IRISH LAND COMMISSION.

The particulars of the holding are to be filled in and signed by the Lay Assistant Commissioners "immediately after inspection, and before the judicial rent is determined with the Legal Assistant Commissioner." In case of a difference of opinion, a separate form is to be filled in and signed by each Assistant Commissioner. All areas to be given in statute measure.

No. of Ordnance Sheet, _____

County _____ Tenant _____

Record No. _____ Landlord _____

Date upon which holding inspected _____ day of _____ 189__.

Who attended inspection on behalf of Landlord?

Ditto, on behalf of Tenant.

1. Character of Holding.—The land in a holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be carefully filled up according to the facts. The acreage of each class of land found in the holding should be set out in the column given for the purpose, and this area should be marked off with a blue-coloured line on the Ordnance Survey map of the holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible. The record number of the holding should in each case be marked on the map, and where more than one holding is marked on the map a Schedule of holdings, with the record numbers and tenants' names, is to be written on the right-hand margin of the map. The exterior boundaries of each holding must be carefully marked on the map with a red-coloured line.

1. SCHEDULE of CLASSES of LAND.

	Area in Statute Measure. A. R. P.
Grass Lands:	
A. 1st Class	
B. 2nd „	
C. 3rd „	
D. 4th „	
E. 5th „ Mountain and unreclaimed Bog	
F. 1st „ permanent Meadow	
G. 2nd „ „ „	
Land in Tillage or worked in rotation, including Pasture or Meadow of a temporary character:	
H. 1st Class	
I. 2nd „	
K. 3rd „	
L. 4th „ reclaimed Mountain or Bog	
X. Waste (description)	
Total Area	

2. For what description of stock is the grass land best suited?

3. Carrying power in sums or collops of grass land, stating the months during which the season usually continues, and how hay is provided.

4. How is the holding used?

5. Does the soil show traces of improvement or of deterioration, and to whom is the improvement or deterioration to be attributed?

6. Does the holding or any part of it require to be drained, and, if so, how much of the holding? Mark part requiring drainage on map by thin parallel black lines.

7. Improvements, proved in court (excluding buildings), whether made by landlord or tenant, which are at present a *bonâ fide* benefit and suitable to the holding, and are found to exist on inspection, to be stated in detail.

8. Buildings, if tenant's state so, if landlord's specify particulars of same, state fair annual value, whether they have been kept in repair, and by whom?

9. Situation as to markets, railways, and county roads.

10. What percentage (if any) has been added for proximity, or what (if any) has been deducted in consequence of remote position?

11. Give particulars of any right of turbary, commonage, mountain grazing, or sea-weed, and state whether turbary is inside or outside holding. What amount has been added for any of those appurtenances?

12. Local Rates.—Average poor rate in £.
,, county cess in £.

13. Special incidents of holding, such as aspect, elevation, and water supply, and general observations.

To be signed by Lay Assistant Commissioners. _____ day of 189

14.—The following improvements, included in enumeration in paragraph No. 7, were made or acquired by the tenant or his predecessors in title and are exempted from rent.

15. For what rights (if any), referred to in answers to Query No. 11, has an addition been made to the rent?

16. Upon what assumption with regard to the respective liabilities of landlord and tenant as to rates and taxes, mentioned in answers to Query No. 12, has the judicial rent been fixed?

To be signed by Legal and Lay Assistant Commissioners. _____

17. If tenancy has been purchased since the Land Act, 1870, give date and amount of purchase money on each sale.

18. What changes of rent have been proved in evidence?

_____

To be signed by Legal Assistant Commissioner alone.

N.

MEMORANDUM as to Costs of Application to fix a Fair Rent.

In cases where rent does not exceed 5*l.*—With one valuer, about 2*l.*; with two valuers, 2*l.* 15*s.*; with two valuers and counsel, about 4*l.*

In cases where rent exceeds 5*l.*, but does not exceed 15*l.*—With one valuer, 3*l.* 10*s.*; with two valuers, 4*l.* 10*s.*; with two valuers and counsel, 6*l.*

In cases where rent exceeds 15*l.*, but not 50*l.*—With one valuer, 4*l.* 10*s.*; with two valuers, 5*l.* 5*s.*; with two valuers and counsel, 8*l.* 10*s.*

In cases where rent exceeds 50*l.*, but not 100*l.*—With one valuer, 8*l.*; with two valuers, 10*l.* 10*s.*; with two valuers and counsel, 13*l.*

In cases where rent exceeds 100*l.*—With one valuer, 12*l.*; with two valuers, 15*l.*; with two valuers and counsel, 20*l.*

The costs of appeal are identical with the costs of a hearing before the Sub-Commission, save that the appeal notice bears a stamp of 10*s.*, and that the cost of obtaining map of holding and valuation comes to about 10*s.* more.

In leasehold cases the solicitor's fee is increased by one-half, but the above figures fairly represent the probable costs both in leasehold and yearly tenancy cases. In the former cases the costs might slightly exceed the figures given above.

IRISH LAND COMMISSION.

RETURN showing the Number and Strength of the Sub-Commissions from time to time since the passing of the Land Law (Ireland) Act, 1881.

From	To	Number and Strength of Sub-Commissions.	Number of Assistant Commissioners.	
			Legal.	Lay.
4 October - - 1881	9 November - 1881	4 Sub-Commissions of 3 - - -	4	8
10 November - „	6 December - „	7 „ 3 - - -	7	14
7 December - „	13 April - - 1882	12 „ 3 - - -	12	24
14 April - - 1882	17 September - „	16 „ 3 - - -	16	32
18 September - „	18 December - „	17 of 3 members, with a valuer attached to each.	17	34
5 January - - 1883	31 July - - 1884	17 Sub-Commissions of 5 - - -	17	68
1 August - - 1884	31 July - - 1885	10 „ 3 - - -	10	20
1 August - - 1885	31 December - „	8 „ 3 - - -	8	16
1 January - - 1886	8 March - - 1887	4 „ 3 - - -	4	8
9 March - - 1887	5 May - - „	2 of 5 members, and 2 of 3 - -	4	12
6 May - - „	25 August - - „	4 Sub-Commissions of 5 - - -	4	16
26 August - - „	23 November - „	6 „ 5 - - -	6	24
24 November - „	22 August - - 1888	10 „ 5 - - -	10	40
23 August - - 1888	31 December - „	5 of 7 members and 5 of 5 - -	10	50
1 January - - 1889	22 August - - 1889	10 Sub-Commissions of 7 - - -	10	60
23 August - - „	22 August - - 1891	8 „ 9 - - -	8	64
23 August - - 1891	31 December - 1893	4 „ 7 - - -	4	24
1 January - - 1894	31 July - - 1894	3 „ 7 - - -	3	18

APPENDIX, No. 2.

PAPER handed in by the Right Hon. *Gerald FitzGibbon*, P.C., 29 May 1894.

COURT OF APPEAL, IRELAND.—"JUDICIAL STATISTICS," 1882–93.

APPEALS and Cases stated from Land Commission.—Number of Judgments entered by Registrar.

YEAR.	Affirmed.	Varied.	Reversed.	Remitted.	Reversed with Declaration.	Case Reserved.	TOTAL.
1882 - -	11	—	3	—	—	1	15
1883 - -	2	—	1	—	2	—	5
1884 - -	6	—	5	1	—	—	12
1885 - -	8	—	(1) 21	—	—	—	29
1886 - -	8	6	6	—	—	—	20
1887 - -	10	—	4	—	2	—	16
1888 - -	11	1	1	—	—	—	13
1889 - -	6	—	2	—	—	—	8
1890 - -	9	—	1	—	2	—	12
1891 - -	9	—	4	—	—	—	13
1892 - -	17	—	12	—	—	—	29
1893 - -	27	1	8	—	3	—	39
TOTAL -	124	8	68	1	9	1	211

(1) Twenty-one Consolidated Appeals.

APPEALS and Cases stated by Land Commission.—Subjects for Consideration, as noted by Lord Justice *FitzGibbon*.

Exceptions from Acts, 1881, Section 58.	1882.	1883.	1884.	1885.	1886.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	1894.	TOTAL.
1. Agricultural or pastoral - -	1	1	–	–	–	–	–	–	1	1	–	5	1	10
2. Residential holding - - -	–	–	–	–	–	1	–	–	1	1	9	4	1	17
3. Demesne land - - - - -	–	–	2	–	3	1	2	–	–	2	6	1	2	19
4. House farm - - - - - -	–	–	–	–	–	–	–	–	–	–	1	–	–	1
5. Town Parks, 1881, Section 58; 1887, Section 9.	5	–	2	6	3	1	2	–	–	1	3	12	3	38
6. Let for pasture - - - - -	1	–	2	–	1	3	2	–	–	1	5	6	–	21
7. Let for temporary convenience -	1	1	–	1	–	1	–	1	1	–	–	1	–	7
Sub-letting, 1881, Section 57; 1887, Section 4.	–	–	–	–	–	2	–	–	1	1	1	5	1	11
Status of tenant - - -	–	–	3	–	–	–	–	–	1	–	–	–	–	4
Leaseholder or tenant from year to year.	–	–	–	–	1	–	–	–	–	–	–	–	–	1
Lease within Act of 1887, Section 1 -	–	–	–	–	–	–	–	–	1	2	2	–	–	5
Present or future - - - -	–	2	–	1	–	1	2	3	–	2	–	3	–	14
Bonâ fide occupation - - -	1	–	–	–	–	2	–	–	1	1	–	–	–	5
Unreasonable lease, 1881, Section 21 -	3	–	–	–	1	–	–	1	1	–	–	–	–	6
Resumption by landlord - - -	–	–	–	–	–	2	1	–	1	–	1	–	–	5
Pre-emption by landlord - - -	–	–	–	–	–	–	–	–	1	–	–	–	–	1
Compensation on eviction - - -	–	–	–	–	–	–	–	–	1	–	–	–	1	2
Ulster custom - - - - - -	–	–	–	(2) 21	–	–	–	–	–	–	–	–	1	22
Redemption Act, 1891 - - -	–	–	–	–	–	–	–	–	–	–	–	1	2	3
Purchase Acts - - - - - -	–	–	–	–	1	–	–	–	2	–	–	1	–	4
Procedure - - - - - - -	–	–	1	–	–	1	1	–	1	–	1	–	–	5
Allowance for drainage charge - -	–	–	–	–	–	1	–	–	–	–	–	–	–	1
TOTAL - - -	12	4	10	29	10	16	10	5	14	12	29	39	12	202

(2) Consolidated.

COURT OF APPEAL, IRELAND.—LIST OF DECISIONS, 1882—94.

APPEALS and Cases stated from Land Commission.—Noted by Lord Justice *FitzGibbon*.

YEAR.	Landlord (1). Appellant.	Tenant (2). Appellant.	TOTAL.
1882	4	8	12
1883	3	1	4
1884	8	2	10
1885	2	27 (3)	29 (3)
1886	6	4	10
1887	9	7	16
1888	4	6	10
1889	2	3	5
1890	8	6	14
1891	6	6	12
1892	18	11	29
1893	12	27	39
1894	8	4	12
TOTALS	90	112	202

Decisions in favour of Landlord	107
Decisions in favour of Tenant	95
	202

(1) Including cases stated on Landlord's application.

(2) Including cases stated on Tenant's application.

(3) Including 21 Consolidated Appeals.

APPENDIX No. 3.

PAPER handed in by Mr. *W. F. Bailey*, 1 June 1894.

TABLE I.—EXCLUSIONS FROM THE FAIR RENT PROVISIONS OF THE LAND ACTS.

Four Classes of Lettings are excluded :—(1.) Where no Tenancy is created ; (2.) Lettings to future Tenants ; (3.) Lettings to present Tenants in certain Cases ; (4.) Lettings excluded by Agreement.

Nature of Exclusion from Fair Rent Provisions of Land Acts.	Section of Statute or Legal Decision under which excluded.	Observations, and Court by which decided.
1. WHERE NO TENANCY IS CREATED.		
Agistment lettings : confers merely a right of grazing -	Act 1881, s. 58, sub-s. (6) -	These are not, properly speaking, tenancies ; the possession of the land does not pass.
Conacre lettings : for a single crop - - - - - -	Act 1881, s. 58, sub-s. (6) -	
The grantee of a fee farm grant where the relation of landlord and tenant is held not to exist ; excluded from the Rent Redemption Act, 1891.	*Kelly* v. *Rattey* (Court of Appeal), 27 I.L.T.R. 88.	Land Commission confirmed by Court of Appeal.
A sub-letting made by a tenant who had not power to sub-let is void, and no tenancy is created in the intended sub-tenant.	Act 1860, s. 18, as interpreted in case of *Jagoe* v. *Harrington*, 10 L.R. Ireland, p. 335.	
Examples : a sub-letting made by a lessee under a lease with a covenant against sub-letting ; also a sub-letting without written consent made since 1881 in a holding to which Act of 1881 applies.	Act 1881, s. 2.	
The purchaser of a tenancy where the conditions prescribed by Section 1, Act of 1881, though applicable, have not been complied with, may be excluded from the Provisions of the Land Acts. The landlord may continue to treat the vendor as still tenant.	Mr. Cherry in his notes to Section 1 Act of 1881 (p. 224) is of this opinion and refers on the point to the case of *Shine* v. *Dillon* Ir. R.I. Com. Law, p. 277.	There is no reported case in which this is decided.
2. LETTINGS TO FUTURE TENANTS.		
A future tenancy is a tenancy beginning after the passing of the Act of 1881, except a tenancy created before the 1st of January 1883 in a holding in which a tenancy was subsisting on the 22nd of August 1881. Future tenancies are excluded from right to have a fair rent fixed.	Act of 1881, s. 57. Act 1881, s. 8.	*See* also case of *Howell* v. *Briscoe*, Cherry, pp. 232, 321.
A present tenancy may be determined by the termination of the estate of the landlord who created the tenancy where such landlord has no power to create a tenancy in the lands which will bind the succeeding landlord. In such cases if the tenancy is determined on or after the 1st of January 1883 the landlord can evict, or if he acknowledges the tenant and allows him to remain in possession, the tenancy becomes a future tenancy. This results where a tenancy has been created by a tenant for life.	*Sparrow* v. *Hempenstall*, 24 I.L.T.R. p. 65. *Peyton* v. *Gilmartin*, 28 L.R.I. 378.	Land Commission. Queen's Bench Division.
So also where the lessor's estate terminates with the lease no tenancy is created on its expiration, by virtue of the 21st Section of the Act of 1881.	*Massy* v. *Norse*, 20 L.R.I. 57, 464.	Court of Appeal.
In such a case the lessee cannot have a fair rent fixed during the currency of the lease even against the lessor.	*Moylan* v. *Finch*, 28 L.R.I. 595.	Court of Appeal.
Where a middleman is ejected for non-payment of rent all sub-interests in the holding under him are destroyed. In such a case if a sub-tenant attorns to the head landlord on or after the 1st of January 1883 he becomes a future tenant.	*Commins* v. *Barron*, 19 I.L.T.R. 38.	Mr. Justice Lawson on an appeal from county court judge.

APPENDIX, No. 3.—Exclusions from the Fair Rent Provisions of the Land Acts—*continued.*

Nature of Exclusion from Fair Rent Provisions of Land Acts.	Section of Statute or Legal Decision under which excluded.	Observations and Court by which decided.
2. LETTINGS TO FUTURE TENANTS—*continued.*		
Tenancies created by a mortgagor after the date of the mortgage are not binding on the mortgagee.	*Clarke* v. *Hall*, 24 L.R.I. 316.	Court of Appeal.
Mere acquiescence by the mortgagee in the creation of tenancies by the mortgagor does not render them binding on him.	*O'Rourke's Estate*, 23 L.R.I. 497. *Clarke* v. *Nixon*, 21 I.L.T.R. 45.	Mr. Justice Monroe.
A tenant of a present tenancy may enter into a lease or contract which will be a surrender by operation of law of his present tenancy, and the creation of a new tenancy which will be a future tenancy.	*Conroy* v. *Marquis of Drogheda*, 28 I.L.T.R. 59.	Court of Appeal.
3. CERTAIN CLASSES OF PRESENT TENANTS EXCLUDED:		
[A present tenancy means a tenancy subsisting at the date of the passing of the Act of 1881, or created before the 1st of January 1883 in a holding in which a tenancy was subsisting at the time of the passing of the Act (Act 1881, s. 57).]		
The Land Acts, except so far as they deal with compensation for improvements and with the purchase of holdings, do not apply to the following classes of tenancies even though they be present tenancies.	Act 1881, s. 58.	
Any holding which is not "agricultural" or "pastoral" in its character, or "partly agricultural and partly pastoral."	Act 1881, s. 58; Act 1870, s. 71.	
This exclusion comprises what are termed "non-agricultural holdings."		
It includes "residential holdings." *See* case of *Carr* v. *Nunn* (Donnell's Reports, 331). *See* also examples collected by Mr. Cherry, p. 325.		
Where part of the holding is non-agricultural (as for example, a mill) the entire is excluded.	*Boyle* v. *Foster*, 30 L.R.I. 623. *Bradley* v. *Johnston*, 3 L.R.I. 632. *Wall* v. *Eyre*, 32 L.R.I. 475. (This was case of lease which included the tolls of a fair.)	These cases were decided by the Court of Appeal on the principle laid down by Judge O'Hagan in the case of *Leonard* v. *St. Leger Barry* (M'Devitt's Rep. 240).
Demesne lands: these comprise agricultural or pastoral lands occupied with the mansion house of the estate (Lord Justice Fitzgibbon in *Griffin* v. *Taylor* 16 L. R. I. 203).	Act 1881, s. 58.	
Where part of a holding comprises demesne lands all is excluded.	Judge O'Hagan in *Leonard* v. *St. Leger Barry*, M'Devitt, p. 240.	
It is not necessary that the landlord of demesne lands should be an owner in fee.	*Magner* v. *Hawkes*, 32 L.R.I. 285.	Court of Appeal.
The demesne character is not taken away by the giving of a fee farm grant to the tenant, or by the mere fact of the lands being demised for so long a period as to negative any intention of resumption of possession by the landlord.	*Spencer* v. *Tedcastle*, 32 L.R.I. 411.	Court of Appeal.
Home farms: any lands being or forming part of a home farm which may be defined as "a farm to be used for the convenience or advantage of the landlord's residence, and in connection therewith, and not merely as an ordinary farm to be used for the purpose of profit."—*Hamilton* v. *Sharpe* (20 L. R. I. p. 239).	Act 1881, s. 58.	

APPENDIX, No. 3.—Exclusions from the Fair Rent Provisions of the Land Acts—*continued.*

Nature of Exclusion from Fair Rent Provisions of Land Acts.	Section of Statute or Legal Decision under which excluded.	Observations and Court by which decided.
3. CERTAIN CLASSES OF PRESENT TENANTS EXCLUDED—*continued.*		
Town parks: must have 3 statutory requisites: (a.) Must be near a city or town; (b.) Must bear increased value as accommodation land over and above the ordinary letting value of land occupied as a farm; (c.) Must be in the occupation of a person living in the city or town or in the suburbs thereof.	Act 1881, s. 58.	
A holding having these characteristics may come within the Acts if the tenant can show that it is let and used as an ordinary *agricultural* farm, and that its inclusion would not substantially interfere with the improvement or development of the town, or the accommodation of its inhabitants (Act 1887, s. 9).		
User as a *pasture* holding will not be sufficient to bring holding within Section 9, Act of 1887.	*MacNamara* v. *MacNamara*, 32 I.L.I. 1.	Court of Appeal, Walker, Chancellor; Palles, Chief Baron; Fitzgibbon, L.J.
Population now held to be a defective test as to whether a place is a town.	*Archer* v. *Caledon*, 28 I.L.T.R. 4.	Court of Appeal.
Pasture holdings: any holdings let to be used wholly or mainly for the purposes of pasture if (a.) valued not less than 50*l.*, and (b.) if valued under 50*l.* also excluded unless the tenant resides thereon, or unless it adjoins or is ordinarily worked with the farm on which he actually resides.	Act 1881, s. 58.	
The test is the purpose of the letting. This to be gathered from the lease or instrument of letting, and if these are silent, from the nature and user of the land.	Bewley, J., in *Eivers* v. *Hamilton*, 28 L.R.I. 464. Court of Appeal in *Byrne* v. *Hill*, 30 L.R.I. 603, and in *M'Cormick* v. *Loftus*, 28 I.L.T.R. 37.	Court of Appeal.
The purpose of the letting may also be deduced from the nature and character of the land. Thus where the holding can only be tilled to a limited extent the purpose of the letting is held to be mainly for the purposes of pasture.	*O'Brien* v. *White*, 16 L.R.I. 15.	Court of Appeal.
Labourers' or servants' holdings: any holding which the tenant holds by reason of his being a labourer or hired servant.	Act 1881, s. 58.	
Lettings for temporary convenience, or to meet a temporary necessity, either of the landlord or of the tenant.	Act 1881, s. 58.	
Holding let to a tenant during his continuance in any office, appointment, or employment.	Act 1881, s. 58, sub-s. 7.	
Any cottage allotment not exceeding a half of an acre -	Act 1881, s. 58.	
Glebe lands under Act of 38 & 39 Vict. c. 42 - - -	Act 1881, s. 58.	
In addition to the tenancies specially excluded by Section 58 of the Act of 1881, in the following cases present tenants are also excluded from the fair rent sections of the Land Acts.		
English managed holdings: in which the permanent improvements have been made and substantially maintained by the landlord.	Act 1881, s. 8, sub-s. 4.	
Purchaser of a present tenancy sold for breach of a statutory condition.	Act 1881, s. 20.	
If a tenant who has been ejected for non-payment of rent sells his equity of redemption, the purchaser cannot at any future time apply to have a fair rent fixed for the holding (*see* Mr. Cherry's Land Acts, p. 248).	Act 1881, s. 20.	
So also the purchaser of a tenancy sold by an assignee in bankruptcy (Cherry, p. 238).	Act 1881, s. 20.	

APPENDIX, No. 3—Exclusions from the Fair Rent Provisions of the Land Acts—*continued.*

Nature of Exclusion from Fair Rent Provisions of Land Acts.	Section of Statute or Legal Decision under which excluded.	Observations and Court by which decided.
3. CERTAIN CLASSES OF PRESENT TENANTS EXCLUDED—*continued.*		
Reversionary lease: A lessee is excluded where a reversionary lease of the holding, or of part of the holding, has been made *bonâ fide* before the 22nd August 1881, either to a third party or to the tenant himself.	Act 1881, s. 21. *Beamish* v. *Crowley*, 16 L.R.I. 279. *Sproule* v. *Ramsey*, 26 I.L.T.R. 4.	Court of Appeal. Court of Appeal.
Where the landlord has the right to resume possession: The tenant of an expired lease is excluded where the landlord can satisfy the Court that he desires to resume the holding for the *bonâ fide* purpose of a residence for himself, or some members of his family, or as a home farm in connection with his residence.	Act 1881, s. 21.	
Present tenancies contracted out of Land Acts: A tenant whose aggregate valuation is 150*l.* or upwards, can contract out of any of the provisions of the Land Acts.	Act 1881, s. 22.	
Thus, where a tenant whose valuation was over 150*l.*, entered into a lease after 1881, which prevented him from getting a fair rent fixed, he was held to be bound thereby.	*Ronaldson* v. *La Touche*, 24 L.R.I. 344.	Court of Appeal.
Sub-letting: A tenant who is held not to be in occupation of his holding owing to a sub-letting existing at the date of the service of the originating notice to have a fair rent fixed is excluded unless— (a) He has sub-let with the consent of his landlord; or (b) The sub-letting is to labourers employed on the holding, and does not exceed half of an acre; or (c) The sub-letting is of a trivial character.	Act 1881, s. 57. Act 1887, s. 4.	
"Consent" must be active consent	*Maconchy* v. *Robertson*, 18 L.R.I. 418.	Court of Appeal.
Knowledge of sub-letting by landlord, even where there is a covenant against sub-letting in the lease, and no steps have been taken to enforce the covenant, is not held proof of consent.	*Kennedy* v. *Essex*, 28 L.R.I. 586.	Court of Appeal.
Where there is a covenant against sub-letting, unless with the written consent of the landlord, a verbal consent is not sufficient.	*Bowman* v. *Catherwood*, 28 L.R.I. 572.	Exchequer Division.
"Triviality" depends not alone on the area of the part sub-let, but also on its value. Thus, where less than one acre in a holding of 151 acres was sub-let for a tar factory, at a rent of 20*l.* a year, held not trivial.	*Martin* v. *Purcell*, 28 L.R.I. 470.	Land Commission.
In *Kennedy* v. *Essex*, Court of Appeal held that sub-letting of five houses and two acres of land in holding of 109 acres Irish, not trivial. The houses brought in a rent of 18*l.*, while rent of entire holding was 300*l.* That is a sub-letting amounting to 6 per cent. of the annual rental considered substantial. Doubtful from judgments if sub-letting of two acres out of 109 is not sufficient to exclude.	*Kennedy* v. *Essex*, 28 L.R.I. 586.	Court of Appeal. Recently the Court of Appeal has decided two cases, not yet reported, where 4¾ acres out of 162 acres held to be trivial (*White* v. *White*); and four acres out of 161, trivial (*Ward* v. *Corballis*).
Where part of a holding is sub-let when the contract of tenancy, under which the tenant claims, was made, no consent of the landlord is effectual to give the necessary status of occupation to the tenant: "acquiring a reversion is not sub-letting" (Lord Justice Fitzgibbon in *Flannery* v. *Nolan*).	*Flannery v. Nolan*, 20 L.R.I. 540. *Thompson* v. *Rossmore*, 32 L.R.I. 431. *Buchanan* v. *Cowell*, 26 I.L.T.R. 24.	Court of Appeal. Court of Appeal. Land Commission.
4. EXCLUSIONS BY AGREEMENT.		
Judicial lease: A lease agreed on and approved of by the Court, made between a landlord and tenant of a tenancy not subject to statutory conditions, excludes provisions of the Land Acts.	Act 1881, s. 10.	
Fixed tenancy: An ordinary tenancy may be converted into a fixed tenancy by agreement of landlord and tenant. Such tenancy shall be held under a fee farm rent which may be revised by the Court at certain intervals of not less than 15 years.	Act 1881, ss. 11, 12.	

APPENDIX, No. 4.

PAPER handed in by Mr. *W. F. Bailey*, 1 June 1894.

TABLE II.—RESTRICTIONS ON CLAIM FOR IMPROVEMENTS UNDER SECTION 4, ACT OF 1870, AS INCORPORATED WITH THE ACT OF 1881, UNDER THE DECISION IN ADAMS *v.* DUNSEATH.

A tenant, not subject to the Ulster custom, on having a fair rent fixed, is not entitled to exemption from rent on his improvements in the following cases :—

(1.) Where the improvements were made 20 years before the claim, and before August 1st 1870, except permanent buildings and reclamation of waste lands.

(2.) Where the improvements were prohibited in writing by the landlord, and appear to the court to diminish the general value of the landlord's estate, and were made during the unexpired residue of a lease made before August 1st 1870, or within two years after that date.

(3.) Where the improvements were made in pursuance of a contract entered into for a valuable consideration therefor.

(4.) Where the improvements were made in contravention of a contract in writing. A contract prohibiting improvements required for the suitable occupation of the holding shall, however, be void.

(5.) Where the landlord had undertaken to make the improvements, except where he failed to perform his undertaking within a reasonable time.

(6.) Where the improvements were made under a lease, or written contract, made before 1st August 1870, which expressly excluded the right to compensation for improvements on quitting the holding.

(7.) Where the improvements were made under a lease for a term certain of not less than 31 years, or in the case of a lease made before 1st August 1870, for a life or lives where such lease has existed for 31 years before the making of the claim, except permanent buildings, reclamation of waste lands and unexhausted tillages and manures.

TABLE III.—PRESUMPTION AS TO OWNERSHIP OF IMPROVEMENTS WITH EXCEPTIONS FROM SUCH PRESUMPTION WHERE ULSTER TENANT RIGHT DOES NOT EXIST.

All improvements on a holding shall, until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title.

Exceptions to this rule where the improvements were made before 1st August 1870 :—

(1.) Where the improvements were made before an actual purchase of the estate, or holding, by the landlord or his predecessors in title.

(2.) Where the tenant held under a lease.

(3.) Where the improvements were made before the year 1850.

(4.) Where the holding was valued at more than £100.

(5.) Where it is proved to have been the practice on the holding or the estate for the landlord to make the improvements.

(6.) Where from the entire circumstances of the case the court is satisfied that the improvements were not made by the tenant or his predecessors in title.

TABLE IV.—EXCLUSIONS FROM AND RESTRICTIONS ON THE FREE SALE PROVISIONS OF THE LAND ACTS.

Section 1 of the Land Act of 1881, which governs the sale of holdings under the Land Acts applies to both "present" and "future" tenancies. The section does not apply to tenancies in the following holdings:

Holdings Excluded.	Section, &c., under which excluded.
Holdings under Judicial Leases	Act 1881, Section 10.
Fixed Tenancies	Act 1881, Section 11.
Non-agricultural holdings	Act 1881, Section 58.
Demesne lands	ditto.
Home farms	ditto.
Town parks	ditto.
Pasture holdings	ditto.
Labourers' or servants' holdings	ditto.
Conacre and agistment contracts	ditto.
Lettings for temporary convenience	ditto.
Cottage allotments	ditto.
Glebe lands	ditto.
Holdings under *existing* leases	Act 1881, Section 21.
English managed holdings (landlord has the right to veto sale)	Act 1881, Section 1, Sub-section 6.

The right of sale is subject to the following restrictions:—

In a holding subject to a statutory term where a specified value has been fixed at the commencement of the term the landlord may buy at that specified value, should the tenant serve a notice of sale. (Act 1881, s. 8, sub-s. 5).

Where a holding is about to be sold and a sum of money is due to the landlord in respect of arrears of rent or other breaches of the contract of tenancy, the landlord may serve notice of his claim, and failing agreement, such sum shall be settled by the court, and should no purchaser give the same or a greater sum, the landlord shall be adjudged the purchaser of the tenancy at that sum. (Act 1881, s. 1, sub-s. 16.)

APPENDIX, No. 5.

PAPERS handed in by the Right Hon. *Gerald FitzGibbon*, P.C., 5 June 1894, and by Mr. Justice *Bewley*, July 1894.

LAND LAW (IRELAND) ACT, 1881.

IRISH LAND COMMISSION.—COURT OF APPEAL.

County Antrim ; Record No. 18 ; Tenant, David Adams ; Landlord, Jane Dunseath.

Before Mr. Justice O'HAGAN, Mr. Commissioner LITTON, and Mr. Commissioner VERNON.

Tuesday, the 20th day of February 1883.

WHEREAS, by notices dated respectively 20th December 1881, the landlord and tenant herein required this case to be re-heard before the three Land Commissioners sitting together ; and whereas said case came on for re-hearing at Belfast on the 9th day of January 1882 ; and whereas, by order dated 19th January 1882, the Court ordered that the order of the Sub-Commission be varied by directing that each party should abide his own costs of the hearing before the Sub-Commission, and affirmed said order in all other respects ; and whereas, on the application of the landlord, the Court stated a case for the consideration and decision of Her Majesty's Court of Appeal in Ireland in respect of certain questions as set out in said case ; and whereas said Court of Appeal considered that the questions as presented could not be treated solely as questions of law, but was of opinion that the following questions of law arose in the case stated, viz. :—

1. What is the meaning of the term "improvements" in the ninth sub-section of Section 8 of the Land Law (Ireland) Act, 1881 ?

2. Whether the terms "tenant or his predecessors in title" in same sub-section have the same meaning respectively as in the seventh section of same Act ?

3. Whether the provisions of the final paragraph of the fourth section of the Landlord and Tenant (Ireland) Act, 1870, as to improvements made before the passing of that Act, are applicable to such improvements in determining fair rent under the eighth section of the Land Law (Ireland) Act, 1881 ?

4. Whether the enjoyment during the currency of a lease of improvements made by a tenant during such lease is a compensation by the landlord within the meaning of the ninth sub-section of Section 8 of the Land Law (Ireland) Act, 1881 ?

5. Whether the lease of 2nd March 1846 excluded the tenant from any interest in respect of the house built before the execution of that lease in the ascertainment of the fair rent of the holding under the Land Law (Ireland) Act, 1881 ?

And whereas on the 28th day of February 1882 it was considered and declared by said Court of Appeal, in answer to the first of said questions before mentioned, that the meaning of the term "improvements" is the same as in the Landlord and Tenant (Ireland) Act, 1870, Section 70 ; and as to 2, 3, and 5 of said questions, that they should respectively be answered in the affirmative, and that the fourth of said questions should be answered in the negative.

And whereas the case came on again before this Court upon this day.

Whereupon, and on reading the case stated for the consideration of Her Majesty's Court of Appeal and the order of said Court of Appeal made thereon :—

It is ordered that the judicial rent of the tenant's holding, as fixed by the order of the Sub-Commission and affirmed by this Court on re-hearing, be increased by the sum of two pounds sterling in respect of the house built on the holding by James M'Kee, a former tenant and still existing thereon, and that accordingly the judicial rent of the said holding be the sum of 32*l.* 15*s.*, and that the order of the Sub-Commission bearing date the 19th of November 1881, and the order of this Commission bearing date the 19th of January 1882, be varied so far as is requisite to give effect to this order.

(signed) *Hugh Pollock*, Registrar.

Certified to be a True Copy.
W. J. Shaw,
Keeper of Records.

J. B.
G. W. C.

Land Commission Court.—Dublin, 20th February 1883.

(Before Mr. Justice O'HAGAN, Mr. Commissioner LITTON, Q.C., and Mr. Commissioner VERNON, D.L.)

DAVID ADAMS, Tenant ; JANE DUNSEATH, Landlord.

Mr. JUSTICE O'HAGAN.—We have had this case and four other cases on the same estate put into the list for final adjudication as to the judicial rents. The estate formerly belonged to Lord Mountcashel, who having had a valuation made in 1842, granted leases in the year 1846 in the case of David Adams and some of the other cases at the rents so fixed for the term of 30 years from 1st November 1845. These leases expired in November 1875. Pending the leases the reversion had been purchased in the Landed Estates Court by Mr. Dunseath, and on his death became vested in his widow, Jane Dunseath. After the expiration of the lease Mr. Dunseath had the lands re-valued and the rents

rents were in every case increased. The increased rents the tenants were required to pay, and did pay accordingly, down to the fixing of a fair rent under the Act of 1881. When the cases were heard before us on appeal in Belfast in January 1882 occasion was taken to raise several questions of importance on the construction of the Land Act of 1881, and one of the appeals, that of David Adams, was selected by counsel on both sides for a statement of a case to the Court of Appeal pursuant to Section 48, Sub-section 2, of the Act. In the case of David Adams the rent under the lease was 26*l.* 11*s.* 6*d.* This was raised by re-valuation to 31*l.* 17*s.* 6*d.*, which with 4*l.* 10*s.* for a piece of bog, made 36*l.* 7*s.* 6*d.*, which was the rent payable by the tenant when he served his originating notice. The Sub-Commissioners fixed the fair rent at 30*l.* 15*s.*, which was confirmed subject to the result of the case stated. The statement of the case for the Court of Appeal not being of our motion, but on the requisition of the party, we were, of course, bound to submit to the Court of Appeal the questions of law raised by the counsel for the party, and we did so in the very language of Mr. Holmes. The Court of Appeal, however, thought that their decision would be better arrived at, and would be more easy of general application if the questions were shaped in a more abstract and purely legal form, and not with reference to the concrete facts of the case. They altered the frame of the questions so that with one exception, to which I shall presently advert, the decisions are decisions upon questions of the construction of the statute couched in general terms. The questions adjudicated upon by us in Belfast, and dealt with by the Court of Appeal, are three. We held that enjoyment by the tenant during the term of a lease of improvements made by him or his predecessor was not compensation by the landlord within the meaning of the 9th sub-section of Section 8 of the Act of 1881. The Court of Appeal were unanimously of the same opinion. Secondly, we held that the term "predecessors in title," which, by the decision in Holt *v.* Harberton had been interpreted to mean predecessors in respect of the same estate, had now, in the construction of Sub-section 9 of Section 8 of the Act of 1881, the more extended meaning which is given to it by the 7th section of the Act of 1881. Upon that point four of the Judges of the Court of Appeal, that is, the Lord Chancellor, the Master of the Rolls, the Chief Baron, and Lord Justice FitzGibbon, were of opinion that the extended meaning given by the 7th section did apply in construing Section 8. The remaining judges, the Lord Chief Justice, the Chief Justice of the Common Pleas and Lord Justice Deasy were of opinion that the restricted interpretation given by Holt *v.* Harberton still governed Section 8 of the Act of 1881, and that Section 7 of that Act only dealt with compensation on quitting the holding. The third question was whether the final paragraph of Section 4 of the Act of 1870 was applicable to the fixing of a fair rent under the Act of 1881. There was another question settled by the Court of Appeal, namely, the definition of the word "improvements," but that, as I have had already occasion to point out, was never decided, argued, or raised in the Court below. If raised, it could only receive one answer, the meaning being defined in terms by the Act of 1870. Besides the general question of construction there was one concrete question arising out of the facts of the case. It appeared that before the granting of the lease of 1845, McKee, the then tenant, from whom the father of David Adams purchased, had built upon the holding a house which still exists; rent was claimed by the landlord in respect of that house, the tenant resisted the claim on the ground that it was an improvement made by his predecessor in title. The Lord Chancellor, the Master of the Rolls, and the Chief Baron having held that the words "predecessor in title" had the extended meaning given to it by Section 7 were consequently of opinion with the tenant. On the other hand, the Lord Chief Justice and Lord Justice Deasy having held that the term had, so far as regards the fixing of a fair rent, the restricted meaning given to it by Holt *v.* Harberton, were consequently of opinion with the landlord. Lord Justice FitzGibbon, though, on the general question whether the terms "tenant or his predecessors in title" bear the same meaning in Section 8, Sub-section 9, as in Section 7, he had stated his concurrence with the Master of the Rolls and the Chief Baron, yet on the particular point of the case, which I need not here go minutely into, conceived himself bound to hold that the lease of 2nd March 1846 from Lord Mountcashel to James McKee precluded the tenant from being regarded as having any interest in the house. (His Lordship quotes the words of Lord Justice FitzGibbon on this point.) In the result, therefore, a majority of the Court held that the house was not an improvement which the tenant could claim as made by him or his predecessor in title, and that the landlord was entitled to some rent in respect of it. By that decision we are bound, and we fix the additional rent which David Adams is to pay in respect of the house at 2*l.* a year, which sum, therefore, will be added to the judicial rent. The peculiar circumstances connected with the building of this house in relation to the granting of the lease of 1846 do not exist in any of the other cases. But we have been asked, both in the case of David Adams and in the remaining cases, to give effect to the decision of the Court as regards the final clause of the Act of 1870. That clause is as follows: "Where the tenant has made any improvements before the passing of the Act upon any holding held by him under a tenancy existing at the time of the passing thereof, the Court, in awarding compensation to such tenant in respect of such improvements, shall, in reduction of the claim of the tenant, take into consideration the time during which the tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord (expressly or impliedly) of the improvements so made." Apart from this sub-section the rent at which a holding has previously been held does not form a circumstance to be taken into consideration in defining the interest of the landlord or the tenant in fixing a fair rent under Section 8. The previous rent is, of course, important evidence in any case, but we do not conceive ourselves justified under Section 8 in making a present judicial rent in any degree lower, because the rent had been too high in the past. But when we are taking the time during which the tenant has enjoyed the advantage of his impunity we must take into consideration in connection therewith the rent the tenant has been paying. Accepting implicitly the principle laid down by the Court of Appeal, Mr. Litton, Mr. Vernon and I have come to the conclusion that we could not in these cases make any substantial reduction in the interest of the tenant. The difference would be so trivial that in our opinion it would be idle to make any alteration in the amount. All the judicial rents, therefore, remain as fixed on appeal by us, with the exception, as I said, of David Adams, upon whom we have put 2*l.* for the house. I conclude by drawing attention to the circumstance pointedly adverted to by the Lord Chancellor, namely, that the question of the Ulster Tenant Right Custom was not raised in the case of David Adams, and it must be considered as a decision on the general law apart from the custom. In the other cases, however, on reading over the evidence we find that the existence of the tenant-right custom as applicable to those holdings is distinctly acknowledged.

Mr. W. H. Dodd, instructed by Mr. Caruth, appeared for the tenants. Mr. Hugh Holmes, Q.C., instructed by Messrs. Orr, appeared for the landlord.

APPENDIX, No. 6.

PAPER handed in by the Right Hon. *Gerald FitzGibbon*, P.C., 5 June 1894.

APPEALS AND CASES STATED FROM LAND COMMISSION, 1882—1894.

LIST of all DECISIONS of COURT of APPEAL noted by Lord Justice *FitzGibbon*.

No.	Date.	Landlord.	Tenant.	Court.	Subject.	Appellant.	Result.
1	1 Feb. 1882	Eiffe	McKenna	Ch. ; M.R. ; D. and F., LL JJ.	Temporary letting	L.	A.
2	8 „ „	Dunseath	Adams	Ch. ; C.J. ; M.R. ; C.J.CP. ; C.B ; D. and F., LL.JJ.	Construction of Acts	L.	V.
3	26 April „	Bowen	Sullivan	Ch. ; C.J.C.P. ; D. and F., LL.JJ.	Unreasonable lease	L.	A.
4	27 „ „	Davies	Harpur	Ch. ; C.J.C.P. ; D. and F., LL.JJ.	Pasture	T.	D.
5	26 June „	Shaw	Cave	Ch. ; M.R. ; D. and F., LL.JJ.	Agricultural character	T.	D.
6	15 Nov. „	Ashtown	Sweeny	ditto	Unreasonable lease	T.	A.
7–10	1 Dec. „	Lambert	Killeen and others	Ch. ; C.J. ; D. and F., LL.JJ.	Town parks	T.	D.
11	6 „ „	Graham	Gorman	Ch. ; D. and F., LL.JJ.	*Bonâ fide* occupation	L.	A.
12	13 „ „	Fitzwilliam Dick	Carty	ditto	Unreasonable lease	T.	A.
13	23 Jan. 1883	Bence Jones	Hayes	Ch. ; M.R. ; F., L.J.	*Bonâ fide* occupation	L.	A.
14	19 June „	Brooke	West	M.R. ; F. and B., LL.JJ.	Agricultural character	L.	D.
15	14 Nov. „	Hungerford	McCarthy	C.J.C.P. ; C.B. ; F. and B., LL.JJ.	Present tenancy	L.	D.
16	29 „ „	Wilson	McCutcheon	C.J. ; C.B. ; F. and B., LL.JJ.	Temporary letting	T.	D.
17	17 Jan. 1884	Orpen	FitzGerald	Ch. ; F. and B., LL.JJ.	Demesne	T.	D.
18	29 Feb. „	Sinclair	Simms	Ch. ; C.B. ; F., L.J.	Leaseholder or tenant	T.	D.
19	6 May „	Stubber	Drought	Ch. ; F. and B., LL.JJ.	Pasture	L.	D.
20	8 „ „	White	O'Brien	Ch. ; F. and B., LL.JJ.	Pasture	L.	A.
21	13 June „	Taylor	Griffin	ditto	Demesne	L.	A.
22	25 „ „	Davies	Reilly	Ch. ; C.B. ; and F., L.J.	Present tenancy	L.	D.
23	25 „ „	Lawson	Blair	ditto	Town parks	L.	D.
24	30 „ „	Chichester	Hanson	Ch. ; F. and B., LL.JJ.	Leaseholder or tenant	L.	A.
25	14 Nov. „	Musgrave	St. Kieran's College	Ch. ; C.B. ; F. and B., LL.JJ.	Procedure interlocutory	L.	A.
26	17 Dec. „	Caruth and another	Kiernan and another	Ch. ; F. and B., LL.JJ.	Procedure "re-hearing"	L.	A.
27–47	21 Jan. 1885	Brooke	McIlroy and 20 others	Ch. ; M.R. ; F. and B., LL.JJ.	Ulster custom ; specified value	T.	A.
48–52	22 „ „	Givan	Five tenants	Ch. ; M.R. ; and B., L.J.	Towd parks, 3 D. 2 A.	T.	V.
53	23 April „	Johnston	Maguire	C.B. ; F. and B., LL.JJ.	Leaseholder present tenant	L.	D.
54	12 May „	Musgrave	St. Kieran's College	ditto	Town parks	L.	A.
55	3 July „	Stowell	O'Connor	Ch. ; F. and B., LL.JJ.	Temporary letting ; demesne	T.	D.
56	28 Jan. 1886	Bloomfield	Fausset	Ch. ; F., B., and N., LL.JJ.	Demesne	T.	A.
57	17 Feb. „	Bloomfield	McGauran	Ch. ; F. and B., LL.JJ.	Demesne ; remitted	L.	V.
58	17 „ „	O'Callaghan	Kennedy	ditto	Leaseholder or tenant	L.	D.
59	18 „ „	O'Callaghan	Stewart	ditto	Unreasonable lease	T.	A.
60	28 April „	McDermot Roe	Grogan	ditto	Pasture	T.	D.
61	29 „ „	Wrixon-Becher	Cronin	ditto	Demesne	T.	A.
62–64	25 June „	Headford	Nelson	ditto	Town parks ; three holdings	L.	A.
65	20 Dec. „	Colthurst's Estate	—	ditto	Guarantee deposit	L.	D.

66	25 Jan. 1887	Briscoe	Howell	Ch.; F. and B., LL.JJ.	Present tenancy	L.		A.
67	25 „ „	Hamilton	Sharpe	- - ditto	Home farm	L.		A.
68	28 „ „	Gabbett	McCarthy	C.J.; F. and B., LL.JJ.	Rent on drainage instalments	L.		D.
69	28 „ „	Croker	Clanchy	- - ditto	Temporary letting pending minor matter	L.		A.
70	24 Feb. „	Sheehy	McGowan	M.R.; F. and B., LL.JJ.	Town parks, Carlingford	L.		A.
71	12 May „	Nolan	Flannery	Ch.: F. and B., LL.JJ.	Pasture	T.		D.
72	12 „ „	Galbraith	Nagle	- - ditto	*Bonâ fide* occupation; "shrinkage"	L.		D.
73	6 June „	Molesworth	Corrigan	Ch.; M.R.; and F., L.J.	Residential holding	T.		D.
74	7 „ „	Erskine	Armstrong	Ch.; C.J.; and F., L.J.	Resumption, 1881, Sect. 5	T.		D.
75	11 July „	Wray	Ramsey	M.R.; F. and B., LL.JJ.	Stamp on "Re-hearing"	L.		A.
76	26 „ „	Bloomfield	McGauran	Ch.; F. and B., LL.JJ.	Demesne	T.		D.
77	10 Nov. „	Domvile	Dunphy	Ch.: F., B., and N., LL.JJ.	*Bonâ fide* occupation; separate holdings	L.		D.
78	7 Dec. „	Davies	McMahon	- - ditto	Sub-letting	T.		D.
79	8 „ „	Bolton	Keatinge	- - ditto	- ditto	T.		A.
80	19 „ „	Nicholson	Battersby	- - ditto	Pasture	T.		A.
81	19 „ „	Lawder	Holmes	- - ditto	- ditto	L.		D.
82	25 Jan. 1888	Cooke	Torrens	Ch.; F. and N., LL.JJ.	Future tenant; old lease cancelled	T.		D.
83	3 Feb. „	Castletown	Lawlor	Ch.; F., B., and N., LL.JJ.	Demesne	T		D.
84	8 „ „	Bradstreet	Ferguson	F., B., and N., LL.JJ.	Future tenant; rent reduced, arrears remitted.	L.		A.
85	20 April „	Walsh	Dunne	Ch.; F., B., and N., LL.JJ.	Fee-farm grant; not tenant	L.		D.
86	4 „ „	Galbraith	Adams	- - ditto	Town parks; residence	L.		D.
87	30 „ „	Hotham	Smith	- - ditto	Demesne	T.		D.
88	8 Nov. „	Ball	Kellett	- - ditto	Pasture	T.		D.
89	13 „ „	Coates	Brown	- - ditto	Future tenant	T.		D.
90	30 „ „	Mooney	Gaynor	- - ditto	Pasture	T.		D.
91	10 Dec. „	Darnley	Higgins	- - ditto	Town parks; two holdings	L.		D.
92	26 Feb. 1889	Truell	Doyle	- - ditto	Present or future tenancy	L.		D.
93	17 April „	Bolton	Grehan	- - ditto	Fraudulent lease	T.		D.
94	10 May „	Westropp	Smith	- - ditto	Present tenancy	T.		D.
95	16 „ „	La Touche	Ronaldson	- - ditto	Intending purchaser; not tenant	L.		A.
96	8 Nov. „	Carroll	Butterley	C.J.; F. and B., LL.JJ.	Temporary letting	T.		A.
97	13 Feb. 1890	Massareene	Kelly and another	- - ditto	Compensation on eviction	L,		D.
98	14 „ „	Silk	Newell	- - ditto	Resumption for residence	T.		D.
99	1 May „	Waller	Farrelly	Ch.; C.B.; F. and B., LL.JJ.	Pre-emption by landlord	T.		D.
100	6 June „	Delacherois	Whisker	C.B.; F. and B., LL.JJ.	Temporary letting; villa sites	L.		A.
101	9 June „	Blake	McDonnell	- - ditto	Present tenancy until resumption	T.		A.
102	11 „ „	Jackson	McMaster	Ch.; C.B.; F. and B., LL.JJ.	Sub-letting	L.		D.
103	17 „ „	Bradford	Bradford	Ch.; F. and B., LL.JJ.	Residential holding	L.		D.
104	17 „ „	Blacker	Moir	- - ditto	Occupation by receiver for tenant	T.		A.
105	30 „ „	Evans's Estate	- - ditto	- - ditto	Title, Purchase Act	L.		D.
106	5 Aug. „	Leconfield	FitzGerald	Ch.; F. and B., LL.JJ.	Procedure; purchase	T.		A.
107	7 Nov. „	Lanyon	Clinton and another	M.R.; F. and B., LL.JJ.	Unreasonable leases	L.		D.
108	7 „ „	Bangor	Fitzsimons	- - ditto	Lease expiring within 99 years (1887)	L.		D.
109	3 Dec. „	Kerr's Estate	- - - -	Ch.; M.R.; B., L.J.	Purchase,; discharge of incumbrances	L.		D
110	10 Dec. „	Wilcocks	Mooney	Ch.; F. and B., LL.JJ.	Agricultural holding; not temporary letting	T.		A.
111	17 April 1891	Hawkes	Magner	Ch.; C.J.; C.B.; F. and B., LL.JJ.	Demesne	T.		D.
112	17 „ „	Johnston	Bradley	Ch.; C.J.; F., L.J.	Agricultural character; six houses	T.		D.
113	8 June „	Batt	Moore	C.B.; F. and B., LL.JJ.	Demesne	L.		A.

List of all Decisions of Court of Appeal noted by Lord Justice *FitzGibbon*—continued.

No.	Date.	Landlord.	Tenant.	Court.	Subject.	Appellant.	Result.
114	30 Oct. 1891	Essex	Kennedy	Ch.; F. and B., LL.JJ.	Sub-letting	T.	D.
115	3 Nov. „	Fingal	Barnwall	Ch.; F. and B., LL.JJ.	*Bonâ fide* occupation, pasture	T.	D.
116	3 „ „	Finch	Moylan	ditto	Lease by tenant for life (1887)	L.	A.
117	5 „ „	Massy	Woodside	ditto	Present tenancy	L.	D.
118	18 „ „	Mahon	McGuire	ditto	Town parks; additional value	T.	D.
119	4 Dec. „	Allen	Douglas	Ch.; C.B.; and B.L.J.	Pasture	L.	A.
120	7 „ „	Sproule	Ramsay	ditto	Reversionary lease; not "deemed tenant"	T.	D.
121	7 „ „	Becker	Deane	ditto	Residential holding	L.	D.
122	8 „ „	Jackson	Hagan	ditto	Consolidation, "not necessarily future tenant."	L.	D.
123	14 Jan. 1892	Townshend	White	Ch.; C.J.; C.B.; F. and B., LL.JJ.	Demesne	L.	D.
124	15 „ „	White	Johnston	Ch.; C.J.; and F.L.J.	ditto	T.	D.
125	15 „ „	Land Purchase Commissioners.	McDonagh	ditto	Pasture	T.	D.
126	4 Feb. „	Seagrave	Nicolls	C.B.; F. and B., LL.JJ.	ditto	T.	D.
127	12 „ „	Atkinson	Barton	ditto	Lease by tenant for, "if so long live"	L.	A.
128	25 „ „	Wakefield	Robinson	Ch.; C.B.; F. and B., LL.JJ.	Sub-letting	L.	A.
129	2 May „	Burges	McCraith	Ch.; F. and B., LL.JJ.	Demesne	T.	D.
130	4 „ „	Roach	Rice	ditto	ditto	T.	D.
131	5 „ „	Merritt	FitzGerald	M.R.; F. and B., LL.JJ.	House-farm	L.	D.
132	12 „ „	Roden	Dickie	Ch.; F. and B., LL.JJ.	Residential holding; present tenancy	L.	D.
133	12 „ „	Carew	Flynn	ditto	Residential holding	L.	D.
134	2 June „	Muskerry	Stack	ditto	Demesne	L.	A.
135	10 „ „	Pooler	Lepper	Ch.; C.B.; F. and B., LL.JJ.	Residential holding	T.	D.
136	13 „ „	Finch	Looby	Ch.; F. and B., LL.JJ.	Letting by limited owner; present tenancy against him.	T.	A.
137	20 „ „	De Vesci	Waldron	ditto	Residential holding; agricultural	L.	D.
138	23 „ „	Moore	Smyth	ditto	Preemption, procedure	L.	A.
139	28 „ „	Annesley	Wherry	ditto	Agricultural or residential	T.	A.
140	1 July „	Mulholland	Maclean	ditto	Town parks	L.	A.
141	12 „ „	Foster	Boyle	Ch.; M.R.; F.L.J.	Agricultural, mill	L.	A.
142	12 „ „	Hill	Byrne	ditto	Pasture	L.	A.
143	27 Oct. „	Crofton	Flanagan	Ch.; C.J.; F. and B., LL.JJ.	ditto	T.	D.
144	28 „ „	Wright	Daly	ditto	Town parks	T.	D.
145	4 Nov. „	Baker	McCausland	ditto	Residential holding	L.	D.

146	4 Nov. „	Law	Crookshank	Ch.; C.J.; F. and B., LL.JJ.	Agricultural character	L.	A.
147	14 „ „	Macnamara	Macnamara	Ch.; C.B.; F. and B., LL.JJ.	Town parks; not "farm"	L.	A.
148	24 „ „	Townshend	Keohane	Ch.; F. and B., LL.JJ.	Agricultural; not residential	L.	D.
149	25 „ „	Spencer	Tedcastle	ditto	Fee farm grant; demesne	L.	A.
150	28 „ „	Tyrrell	Connolly	ditto	No power to resume for 15 years; home farm.	L.	D.
151	17 Dec. „	Gradwell	McCullagh	C.J.; C.B.; F. and B., LL.JJ.	Pasture	T.	D.
152	17 Jan. 1893	Tighe	Clements	Ch.; C.J.; F. and B., LL.JJ.	Rent on buildings erected under covenant	T.	D.
153	17 „ „	Rossmore	Thomson	ditto	Sub-letting	L.	A.
154	20 „ „	Ryan	Hunt	ditto	Residential holding	L.	D.
155	6 Feb. „	Wallace	McCabe	Ch.; F. and B., LL.JJ.	Town parks	T.	D.
156	8 „ „	Cramsie	Stott	ditto	Residential holding; solicitor tenant	L.	A.
157	9 „ „	Smyth and another	Douglas	ditto	Part non-agricultural; court-house, rent office.	T.	D.
158	9 Mar. „	French	Taafe	ditto	Pasture	T.	D.
159	19 April „	Eddie	Smith and another	Ch.; C.J.; F. and B., LL.JJ.	Sub-letting	T.	D
160	24 „ „	Erne	Fausset	ditto	Pasture	T.	D.
161	24 „ „	Tench	Flanaghan	ditto	Agricultural character; Dolphin's barn	T.	D.
162	27 „ „	Newton	Aughney	ditto	Pasture	L.	A.
163	28 „ „	Hairy	Keays	Ch.; F. and B., L.J.	Ditto	T.	D.
164	28 „ „	Eyre	Hall	ditto	Part not agricultural tolls	T.	D.
165	1 May „	Listowell	Hewson	ditto	Demesne	T.	A.
166	2 „ „	Biggs	Bryan	ditto	Sub-letting; implied consent	L.	D.
167	4 „ „	Rattey	Kelly	ditto	No relation of landlord and tenant	T.	D
168	5 „ „	Cloncurry	Finnerty	ditto	Temporary letting	T.	D.
169	12 „ „	Joynt	Mulcaire	Ch.; C.J.; F. and B., LL.JJ.	Sub-letting; consent	T	A.
170	20 June „	Wallace	Boggs	ditto	Residential holding	T.	D.
171	22 „ „	Redington's Estate		ditto	Reversioner's objection to purchase	L.	D.
172	30 „ „	West	Huggard	Ch.; F. and B., LL.JJ.	Present ordinary tenant	L.	D.
173–9	3 July „	Stewart	Davidson	ditto	Town parks; two farms, five not farms	T.	V.
180	11 „ „	Barker	Molloy	M.R.; F. and B., LL.JJ.	Pasture	T.	D.
181	12 Dec. „	White	White	Ch.	Sub-letting; triviality	T.	A.
182	14 „ „	McNaghten	Taggart	Ch.; C.B.; F. and B., LL.JJ.	Town parks; agricultural	L.	D.
183	15 „ „	Hamilton	Taylor	ditto	Residential holding	T.	D.
184	15 „ „	Domvile	Byrne	ditto	Agricultural character	T.	D.
185	18 „ „	Rourke and another	Murphy	ditto	Present tenancy	T.	A.
186	18 „ „	Harrington	Murphy	ditto	Town park, not farm	T.	D.
187	19 „ „	Loftus	McCormick	Ch.; C.B.; and F.L.J.	Pasture	T.	D.
188	19 „ „	Drogheda	Conroy	ditto	Present tenancy	L.	D.
189	20 „ „	Caledon	Archer	ditto	Town parks	L.	A.
190	21 „ „	Eyre	Mullhall & Grace	ditto	Agricultural character; two holdings, houses and land.	L.	V.

List of all Decisions of Court of Appeal noted by Lord Justice *FitzGibbon*—continued.

No.	Date.	Landlord.	Tenant.	Court.	Subject.	Appellant.	Result.
191	30 Jan. 1894	Conyngham	Boyle	Ch.; F. and B.; LL.JJ.	Ulster custom; adjoining tenant preferred	T.	D.
192	1 Feb. ,,	Goodbody	Perry & Co., Limited	Ch.; F. and B., LL.JJ.	Town parks; accommodation value	L.	D.
193	2 ,, ,,	Caruth	McMahon	ditto	Town parks; "suburbs"	L.	A.
194	21 ,, ,,	Bath vendor	Kiernan, Incr.	ditto	Redemption of rent-charge	L.	D.
195	17 April ,,	Gormanston	Pratt	Ch.; C.J.; F. and B., LL.JJ.	Demesne	L.	A.
196	20 ,, ,,	Annesley	Martin	ditto	Town parks; residence	L.	D.
197	24 ,, ,,	Corballis	Ward	Ch.; M.R.; F. and B., LL.JJ.	Sub-letting; triviality	T.	A.
198	26 ,, ,,	Parkes	Murdoch	ditto	Redemption; agricultural character; mill	T.	D.
199	26 ,, ,,	Abercorn	Watson	ditto	Demesne	L.	A.
200	30 ,, ,,	Farley	Perry	C.B.; F. and B., LL.JJ.	Urban holding, Dublin	L.	A.
201	1 May ,,	O'Kelly	Kelly	Ch.; C.B.; F. and B., LL.JJ.	Compensation on eviction; unreasonable conduct.	L.	D.
202	9 ,, ,,	Conyngham	Moonan	Ch.; C.J.; F. and B., LL.JJ.	Residential holding	T.	A.
—	1894	Morgan's Charity	Graydon	Ch.; F. and B., LL.JJ.	Demesne; for re-argument	L.	—

INDEX.

Ch., Lord Chancellor.
C.J., Lord Chief Justice.
M.R., Master of Rolls.
C.J.C.P., Chief Justice of Common Pleas.
C.B., Lord Chief Baron.
B.C.L., Lord Justice Barry.
D.L.J., Lord Justice Deasy.
F.L.J., Lord Justice FitzGibbon.
N.L.J., LordJustice Naish.
L. Landlord.
T. Tenant.
A. Appeal allowed.
D. Appeal dismissed.
V. Order varied.

"E. & O. E.,"
Gerald FitzGibbon.

5 June 1894.

APPENDIX, No. 7.

TABLE handed in by Mr. *W. F. Bailey*, Legal Assistant Land Commissioner.

TABLE V.

EXAMPLES of CASES where Fair Rents have been recently fixed by the SUB-COMMISSION COURT in which Settlements had been agreed to between the parties after the passing of the LAND ACT OF 1881 reducing the old rents. The Agreements, not having been filed in accordance with the rules of the Land Commission, were not binding between the parties, and the tenants were entitled to come into Court and get Judicial Rents fixed.

County.	Name of Tenant.	Landlord.	Rent in 1881.	Rent agreed to after Act of 1881.	Date of Settlement.	Judicial Rent.	Date of Judicial Rent.
			£. s. d.	£. s. d.		£. s. d.	
DOWN	McCarthy, William	Harrison, Captain J.	9 13 6	8 6 –	1882	6 – –	1893
	McFadden, Samuel	ditto	16 – –	12 – –	1885	7 10 –	,,
	M'Master, D.	ditto	10 13 4	9 13 6	1882	6 10 –	,,
	Dorian, Ellen	ditto	12 10 –	10 10 –	—	6 5 –	,,
	M'Murray, Samuel	ditto	47 15 –	40 15 –	—	27 – –	,,
	Taylor, John	Murphy, C.	19 1 9	18 – –	1886	14 5 –	,,
	Lowry, James	Ward, R. E.	26 – –	20 – –	1882	16 – –	,,
	Davis, Joseph	Murphy, Charles	22 5 6	16 14 2	,,	13 10 –	,,
ARMAGH	Campbell, Mary A.	Kirk, Mrs. J.	26 – –	24 – –	,,	15 15 –	1894
	Brennan, H.	ditto	11 12 6	9 10 –	1884	7 15 –	,,
	Harford	Moore	7 5 9	6 5 –	,,	4 12 6	,,
MONAGHAN	Moan, Charles	Lucas, Edward S.	4 10 –	4 4 –	—	2 15 –	1893
	Martin, John	Hamil, Mrs. E.	19 – –	17 – –	—	14 5 –	,,
	Scott, Robert	Haire-Foster, Rev.	32 5 –	27 10 –	1884	19 – –	,,
	Godfrey, James	Rathdonnell, Lord	11 19 –	9 – –	1882	6 6 –	,,
CAVAN	Brady, Michael	Nugent, Oliver	11 9 –	9 10 –	—	7 7 –	,,
	Fitzpatrick, Michael	Whitney Trustees	16 – –	15 – –	—	10 10 –	,,
	Sheenan, John	Smyth, Moore	12 10 –	12 – –	—	8 15 –	,,
	M'Enerney, H.	Humphreys, A. E.	12 6 –	10 – –	1884	7 – –	,,
	Brady, Hugh	Somers, Representatives	14 14 –	11 – –	1885	7 10 –	,,
	Cobey, D., and others	Maxwell, Charles	14 6 8	10 10 –	1882	8 5 –	,,
	Hartin, H.	ditto	10 5 10	7 15 –	,,	6 – –	,,
	Brady, J.	ditto	13 3 7	9 15 –	,,	8 – –	,,
	Lee, Catherine	Neville, Mrs. F.	11 – –	8 10 –	,,	7 – –	,,
	M'Enerney, T.	ditto	10 14 –	8 10 –	,,	6 10 –	,,
	Fleming, H.	ditto	12 – –	9 – –	,,	6 10 –	,,
	Calnee, P.	ditto	5 – –	4 – –	,,	2 16 –	,,
	Lowry, N.	ditto	7 – –	6 – –	,,	4 4 –	,,
	Keogh, O.	ditto	8 16 –	5 5 –	,,	4 15 –	,,
	Hewett, R.	ditto	3 15 4	3 3 –	,,	2 2 –	,,
	Gaffney, William	ditto	10 10 –	7 – –	,,	5 5 –	,,
	Gaffney, John	ditto	6 4 –	4 15 –	,,	3 10 –	,,
	Gaffney, James	ditto	14 9 6	12 5 –	,,	9 10 –	,,
	Rehill, Terence	ditto	6 5 –	4 5 –	,,	3 5 –	,,
	Fegan, Eliza	ditto	22 – –	16 5 –	,,	12 15 –	,,
	Keogh, James	ditto	8 10 –	7 10 –	,,	5 5 –	,,
	M'Nulty, T.	Hort, Sir F. J.	16 – –	13 5 –	1886	9 – –	,,
	Jermyn, Francis	ditto	23 1 7	16 17 8	1883	13 – –	,,
	Ditto	ditto	14 16 10	10 5 –	1884	7 10 –	,,
	Reilly, John	ditto	23 18 1	19 18 –	1883	14 – –	,,
	McDonald, P.	ditto	26 15 7	20 6 –	1884	13 5 –	,,
	Pratt, Robert	ditto	25 – –	22 – –	—	16 10 –	,,
	Fenner, T.	ditto	31 10 –	23 5 –	1883	18 – –	,,
	Finnigan, B.	Fleming, Captain	3 15 –	3 10 –	1882	2 10 –	1894
	Patterson, William	MacKarness, G.	7 – –	6 8 5	—	4 5 –	,,
	M'Cabe, R.	Sproule, H.	16 – –	12 11 2	1887	10 5 –	,,
	Kells, R.	Ellis, R.	54 11 8	52 – –	1882	45 – –	,,
	Hudson, Ellen	Hassard, R.	11 10 –	9 10 –	1885	7 5 –	,,
	Galligan, William	Neville, Mrs. F.	13 – –	9 – –	1882	7 – –	,,
	Johnson, J.	Huggins, Mrs. A.	16 5 –	14 – –	,,	12 – –	,,

TABLE handed in by Mr. *Laurence Doyle*, Legal Assistant Land Commissioner.

TABLE of CASES in which JUDICIAL RENTS were Fixed by a SUB-COMMISSION after Agreements had been Signed but not Filed in the Land Commission Office.

COUNTY.	Name of Landlord.	Name of Tenant.	Old Rent.	Rent under Agreement.	Date of Agreement.	Judicial Rent.	Date of Judicial Rent.
			£. s. d.	£. s. d.		£. s. d.	
CORK	S. Jagoe	Cornelius Wholey	22 – –	19 – –	1882	15 10 –	1888
	W. St. L. A. Stawell	John Crowley	24 3 –	20 10 –	„	17 10 –	„
	Thomas Gash	Margaret Hurley	51 – –	40 – –	1883	34 – –	1889
	Elizabeth Parsons	Johanna Kelligher	64 – –	56 – –	1884	42 – –	1890
TIPPERARY	Philip Percival	Mary Gleeson	105 – –	87 10 –	1885	81 10 –	„
CARLOW	Ada Jenkins and others	Thomas Jackson	19 19 7	18 – –	1882	16 5 –	1893
GALWAY	H. M. L. Staunton	Patrick Carr	20 – –	17 10 –	1884	13 10 –	„

APPENDIX, No. 8.

PAPER handed in by the Hon. Mr. Justice *Bewley*, 16 July 1894.

RETURN showing some Cases in which the TRUE VALUE fixed by SUB-COMMISSION or CIVIL BILL COURTS has been substantially increased on Appeal.

COUNTY.	Record No.	Landlord.	Tenant.	Area.	Rent of Holding.	True Value fixed by Sub-Commission or Civil Bill Court.	True Value fixed on Appeal.	Increase.	Reduction.	Percentage.	Observations.
				A. R. P.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.		
ANTRIM - - -	9,267	John Boyd - - - -	Andrew Boyd - - -	134 0 0	42 10 -	250 - -	270 - -	20 - -	—	8·0+	
CORK - - -	14,793	John Magner - - -	John T. Cornwall - -	122 2 16	167 3 6	1,220 - -	1,350 - -	130 - -	—	10·6+	
LEITRIM - - -	6,430	John Crawford and others -	Robert Notley - - -	70 0 6	70 - -	300 - -	450 - -	150 - -	—	50·0+	
LOUTH - - -	110 C. B.	Joseph A. Coulter - -	Executors of Gordon Jackson	80 1 0	160 - -	200 - -	600 - -	400 - -	—	200·0+	
MONAGHAN - -	398 C. B.	Andrew J. Crawford - -	Mary Anne Curran - -	20 0 15	15 - -	160 - -	200 - -	40 - -	—	25·0+	
QUEEN'S - - -	3,453	Lord De Vesci - - -	E. G. White - - - -	8 1 8	10 8 -	78 10 -	104 - -	25 10 -	—	32·4+	
TYRONE - - -	12,272	John M'Canny - - -	Bridget Morris - - -	43 0 0	4 12 3½	70 - -	90 - -	20 - -	—	28·5+	

APPENDIX, No. 9.

PAPER handed in by the Hon. Mr. Justice *Bewley*, 16 July 1894.

RETURN showing a Number of Cases in which the RENTS Fixed by SUB-COMMISSION or CIVIL BILL COURTS have been Altered to a substantial extent on Appeal.

COUNTY.	Record No.	Landlord.	Tenant.	Area.	Old Rent.	Rent Fixed by Sub-Commission or Civil Bill Court.	Rent Fixed on Appeal.	Increase.	Reduction.	Percentage.	Observations.
				A. R. P.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.		
ANTRIM	8,207	Alexander M'Millan	John Beck	1 1 9	3 – –	3 – –	2 – –	—	1 – –	33·3 —	
ARMAGH	10,098	H. J. K. Waldron	Hester Coote	13 1 11	12 6 –	9 5 –	12 6 –	3 1 –	—	32·9 +	
CARLOW	1,325	William R. Garrett	Edward Brougham	97 0 31	119 10 –	90 – –	75 – –	—	15 – –	16·6 —	
	1,987	Right Hon. H. Bruen	John N. Whelan	406 3 30	486 19 8	380 – –	435 – –	55 – –	—	14·4 +	
	2,031	E. K. Tighe	A. Fitzmaurice, jun.	456 3 7	416 14 5	360 – –	390 – –	30 – –	—	8·3 +	
CAVAN	4,659	John W. Stanford	Thomas Griffith	97 1 18	104 – –	80 – –	92 – –	12 – –	—	15·0 +	
	6,174	John R. Orpen	William Byers	29 1 8	26 – –	19 – –	22 10 –	3 10 –	—	18·4 +	
	6,326	Henry S. Sankey	Philip Coyle	18 0 37	11 – –	8 – –	10 – –	2 – –	—	25·0 +	
CLARE	5,896	N. W. Blood	Francis Morice	138 0 0	240 – –	190 – –	175 – –	—	15 – –	7·8 —	
	6,804	Marcus Keane	John Breene	152 1 2	120 – –	56 10 –	66 – –	9 10 –	—	16·8 +	
CORK	7,884	A H. Smith-Barry	James Unkles	50 0 0	55 – –	55 – –	48 – –	—	7 – –	12·7 —	
	9,881	George S. Ware	Jeremiah O'Sullivan	169 1 21	110 – –	87 – –	75 – –	—	12 – –	13·7 —	
	10,670	Thomas H. Clibborne	Anne Glavin	46 1 35	137 5 –	96 – –	80 – –	—	16 – –	16·6 —	
	11,489	St. George G. Browne	Jeremiah Hartnett	184 3 34	347 5 –	240 – –	220 – –	—	20 – –	8·3 —	
	11,490	Same	Same	40 0 0	81 6 6	75 – –	65 – –	—	10 – –	13·3 —	
	11,783	Nora Harding	Daniel Harrington	60 0 0	15 – –	15 – –	8 10 –	—	6 10 –	43·3 —	
	12,223	John Leader	Michael Buckley and another	⅔ undivided of 154 2 0	80 – –	60 – –	50 – –	—	10 – –	16·6 —	
	12,400	Francis Sikes	John O'Connell	86 0 17	60 – –	48 – –	39 – –	—	9 – –	18·7 —	
	12,743	Nora Harding	Andrew Ahern	146 2 0	54 7 1½	40 – –	47 – –	7 – –	—	17·5 +	
	12,845	Thomas Gillman	William Cotter	41 2 19	25 – –	15 – –	18 – –	3 – –	—	20·0 +	
	13,710	Thomas Boyce	Cornelius Carroll and another	429 0 13	310 15 –	245 – –	220 – –	—	25 – –	10·2 —	
	14,239	Katherine Hill and others	Patrick Buckley	130 1 9	80 18 6	80 18 6	66 – –	—	14 18 6	18·4 —	
DONEGAL	7,956	Sir Thomas Lecky and another	James W. Fullerton	54 0 0	82 17 4	57 10 –	66 – –	8 10 –	—	14·7 +	
	9,787	Henry Bruen and another	James Langan	57 2 25	13 15 2	9 5 –	12 10 –	3 5 –	—	35·1 +	
	13,384	Earl of Erne	Andrew Moore	135 0 0	81 5 –	55 – –	43 – –	—	12 – –	21·8 —	
DOWN	9,999	Anna M. Neal	Arthur Watson	4 1 30	9 – –	9 – –	5 10 –	—	3 10 –	38·8 —	

DUBLIN	725	Rev. Joseph Geoghegan and others.	Garrett Begg	28 3 31	149 13 -	130 - -	115 - -	—	15 - -	11·5 —
	860	H. F. J. Molloy	Peter Reilly	96 0 35	380 - -	210 - -	238 - -	28 - -	—	13·3 +
	891	R. W. Hartley	John Brennan	261 2 32	430 - -	340 - -	320 - -	—	20 - -	5·8 —
	965	Rev. P. Watson	Margaret Burke	27 2 17	37 10 -	18 - -	24 - -	6 - -	—	33·3 +
	1,260	James K. Hyland	Francis Gill	12 2 36	35 - -	22 15 -	15 - -	—	7 15 -	34·1 —
	1,261	Stewart J. C. Duckett	Francis Gill	300 3 22	550 - -	450 - -	426 - -	—	24 - -	5·3 —
	1,278	Lord Cloncurry	Patrick McDonnell	128 3 35	195 - -	146 - -	160 - -	14 - -	—	9·5 +
	1,379	Edward R. Taylor	John Wilkinson	201 1 25	256 - -	234 - -	222 - -	—	12 - -	5·1 —
	1,457	David Bellamy	James Bagnal	16 0 39	46 3 -	38 10 -	32 - -	—	6 10 -	16·8 —
	1,522	Edward Woods	Michael Sweetman	123 0 17	152 10 8	104 - -	124 - -	20 - -	—	19·2 +
FERMANAGH	5,163	Alexander Boyd	Mary M'Swiggan	1 2 12	- 3 4	- 10 -	1 - -	- 10 -	—	100·0 +
GALWAY	13,243	Martin Walsh	Giles E. Lambert	612 0 26	160 7 6	160 7 6	145 - -	—	15 7 6	9·5 —
	13,637	Martin C. Ffrench	William Daly	121 2 5	45 - -	68 - -	80 - -	12 - -	—	17·6 +
KILKENNY	3,906	William Cole Bayley	John Phelan	40 2 0	25 - -	15 15 -	21 - -	5 5 -	—	33·3 +
	4,104	Colonel V. Stewart	John Hoyne	111 1 29	120 - -	87 - -	100 - -	13 - -	—	14·9 +
KING'S	1,543	Patrick Rhatigan	John Cobbe	51 3 14	45 - -	25 - -	30 10 -	5 10 -	—	22·0 +
	1,866	C. J. Bannon	Michael Horan	50 0 0	22 - -	16 5 -	18 - -	1 15 -	—	10·7 +
	2,349	Mrs. Mulock and another	M. P. Berry	486 2 9	75 - -	50 - -	60 - -	10 - -	—	20·0 +
	2,705	W. P. H. L. Vaughan	Jane Cuffey	130 3 38	146 15 7	115 - -	135 - -	20 - -	—	17·3 +
LEITRIM	5,297	William A. O'Brien	Felix Rourke	1 1 0	3 10 -	1 10 -	2 - -	- 10 -	—	33·3 +
	2,183 C. B.	Owen R. Slacke	Robert Quaile	134 3 30	47 8 -	30 - -	37 - -	7 - -	—	23·3 +
	2,890 C. B.	Emily Little	Michael Moran	122 0 0	31 5 -	19 - -	24 - -	5 - -	—	26·3 +
LIMERICK	3,518	Constance Anster and another	Ellen O'Regan	96 3 1	100 - -	80 - -	70 - -	—	10 - -	12·5 —
	3,788	Nathaniel Buckley	James Hollywell	268 3 23	215 - -	160 - -	175 - -	15 - -	—	9·3 +
	5,075	T. B. Ponsonby	Edmond Glissane	344 0 3	536 3 6	473 - -	453 10 -	—	19 10 -	4·1 —
	5,084	Mrs. E. Cantillon	William Power	247 1 30	419 19 6	268 - -	250 - -	—	18 - -	6·7 —
LOUTH	1,510	James H. Smith-Barry	Charles Markey	501 2 26	597 7 6	506 - -	480 - -	—	26 - -	5·1 —
	2,189	Same	Eliza Brabazon	111 3 11	178 5 6	116 - -	135 - -	19 - -	—	16·3 +
	2,362	Arthur J. Hamill	Luke Traynor	30 3 0	21 - -	16 - -	19 - -	3 - -	—	18·7 +
	2,432	Thomas P. Cairnes	Patrick Reilly	157 3 4	200 - -	130 - -	155 - -	25 - -	—	19·2 +
MAYO	5,473 C. B.	D. M. O'Farrell	William Waldron	36 0 0	15 - -	10 - -	15 - -	5 - -	—	50·0 +
MEATH	1,703	Claude Chaloner	Mary A. Moyles	5 3 9	10 4 2	6 - -	10 4 2	4 4 2	—	70·0 +
	1,968	Assignees of Alexander S. Drake.	Michael Corcoran	113 2 0	275 - -	150 - -	140 - -	—	10 - -	6·6 —
	2,243	Edward R. Taylor	Hubert J. Hanbury	305 0 5	205 10 -	175 - -	205 10 -	30 10 -	—	17·1 +
	2,394	Hans S. Blackwood	Maria Hanbury and another	107 0 27	118 12 9	80 - -	95 - -	15 - -	—	18·7 +
	2,462	Thomas A. Farrell	Mary Farrell	70 2 20	74 18 -	55 - -	61 - -	6 - -	—	10·9 +
	2,493	Marquis of Headfort	Henry Doughty	454 2 20	447 19 6	325 - -	370 - -	45 - -	—	13·8 +
	2,859	General S. R. C. Taylor	Judith Read	208 1 35	218 - 2	178 - -	200 - -	22 - -	—	12·3 +
	2,881	Earl of Fingal	John Kearney	435 1 6	570 12 2	470 - -	500 - -	30 - -	—	6·3 +
	3,278	William C. Mollan	Patrick J. Keiran	99 3 12	100 - -	70 - -	88 - -	18 - -	—	25·7 +
	3,280	Same	Patrick J. Doherty	231 2 35	214 14 -	135 - -	172 - -	37 - -	—	27·4 +
	596 C. B.	Thomas G. Wilson	James Shields	272 0 21	270 10 9	188 - -	220 - -	32 - -	—	17·0 +

RETURN showing a Number of Cases in which the Rents Fixed by Sub-Commission or Civil Bill Courts have been Altered to a substantial extent on Appeal—*continued*.

COUNTY.	Record No.	Landlord.	Tenant.	Area.	Old Rent.	Rent Fixed by Sub-Commission or Civil Bill Court.	Rent Fixed on Appeal.	Increase.	Reduction.	Percentage.	Observations.
				A. R. P.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.		
MONAGHAN - -	7,139	H. H. Shirley - - -	Clara Kelly - - -	328 2 16	387 - -	290 - -	316 - -	26 - -	—	8·9 +	
QUEEN'S - - -	2,274	Sir A. C. Weldon - -	Patrick Murphy - - -	55 2 6	41 5 -	38 - -	32 - -	—	6 - -	15·7 —	
	81 C. B.	Frank Donaldson - -	John Lawler - - -	10 2 4	12 - -	9 - -	12 - -	3 - -	—	33·3 +	
	99 C. B.	Viscount de Vesci - -	Thomas Hartford - -	145 0 32	105 - -	80 - -	90 - -	10 - -	—	12·5 +	
ROSCOMMON - -	9,139	T. G. Wills-Sandford - -	Michael G. Sweeney - -	136 0 26	90 - -	54 - -	60 - -	6 - -	—	11·1 +	
TIPPERARY - -	4,047	Hugh Baker - - -	Alice O'Dwyer and another -	88 1 38	154 1 2	100 - -	115 - -	15 - -	—	15·0 +	
	4,861	Daniel Moloney - - -	Richard Dunne - - -	159 2 9	66 4 -	60 - -	48 - -	—	12 - -	20·0 —	
	4,879	Charles N. Clarke - -	Bridget Lewis - - -	85 3 12	80 9 6	52 10 -	42 - -	—	10 10 -	20·0 —	
	5,079	William R. Marshall - -	Samuel R. Cruess - -	224 0 6	180 - -	138 10 -	172 - -	33 10 -	—	24·1 +	
	5,394	Henry Eustace - - -	Hanora Dwyer - - -	115 2 35	138 6 -	138 6 -	105 - -	—	33 6 -	24·0 —	
	6,290	Julia Baronsfeather and another.	Patrick Murphy - -	72 0 24	55 13 9	46 15 -	39 - -	—	7 15 -	16·5 —	
	6,932	Frederic Henry - - -	Charles M. Going - -	604 1 36	383 3 -	361 13 -	342 - -	—	19 13 -	5·3 —	
WATERFORD - -	2,506	George M. Reade - -	Henry Morris - - -	65 0 19	54 16 10	54 16 10	42 - -	—	12 16 10	23·3 —	
WESTMEATH - -	1,667	James Kiernan and another -	T. O'Beirne and another -	97 0 30	124 6 6	92 - -	100 - -	8 - -	—	8·6 +	
	2,474	E. K. Tighe - - -	Eliza Barrett - - -	423 2 22	349 9 6	300 - -	278 - -	—	22 - -	7·3 —	
WICKLOW - -	1,444	Edmund Sweetman - -	John Harrington - - -	269 2 35	490 - -	340 - -	325 - -	—	15 - -	4·4 —	
	1,835	Teresa Bourke - - -	Isabella A. Jameson - -	24 2 1	75 - -	45 - -	60 - -	15 - -	—	33·3 +	
	1,933	Sir E. S. Hutchinson - -	Henry Jones - - -	39 3 1	30 - -	17 - -	20 - -	3 - -	—	17·6 +	
	2,022	A. E. Humphreys - -	Eliza Clarke and another -	339 2 13	230 - -	180 - -	160 - -	—	20 - -	11·1 —	
	2,345	John Malcolm - - -	Thomas Swan - - -	421 1 17	272 1 8	272 1 8	230 - -	—	42 1 8	15·4 —	

APPENDIX, No. 10.

PAPER handed in by Mr. Justice *Bewley*, 24 July 1894.

LAND COMMISSION COURT.

Waterford, 26 April 1894.

Before Mr. Justice *Bewley*, Mr. Commissioner *FitzGerald*, Q.C., and Mr. Commissioner *O'Brien*.

ESTATE of HENRY VILLIERS STUART.

Mr. *W. Hodnett* appeared for the Tenants. Mr. *W. J. Verlin* appeared for the Landlord.

Patrick Moore, sworn and examined through *Richard Mooney*, Irish interpreter.

1. Mr. *Hodnett.*] Ask him how long he has been in this holding?—He was born there.
2. Was it himself or his father put up the dwelling-house?—His father built some of it and himself built the rest of it.
3. Did he build the remainder, the cowhouse, stable, and piggery?—It was himself built them.
4. And the pair of iron gates?—It was himself built all.
5. Did he do any reclamation himself?—Yes.
6. How much?—About a perch.
7. Then was it his father did it?—It was his father reclaimed the remainder of the 7 acres.
8. Did his father hold under an old lease?—He had.
9. That was at 2*d.* a year?—Yes.
10. I presume the place was mountain when they took it?—It was.
11. Does he remember when the old lease fell out?—He does.
12. When was that; was that about 35 years ago?—About that.
13. Then the rent was raised from 2*d.* to 18*s.* 9*d.*?—That was it.
13°. Mr. *O'Brien.*] Was it 2*d.* an acre, or 2*d.* altogether?
13§. Mr. *Hodnett.*] 2*d.* altogether.
14. Mr. *Verlin.*] Was it your father got the lease?—Yes.
15. Your name is Pat?—John.
16. Who was Pat Moore, who lived at Scrahan?—He never lived at Scrahan, but Rusheens.
17. Was your place called Scrahan at all?—It was never.
18. How long had your father the holding you have now at 2*d.*?—He says from the year of the voting until he died.
19. That was in 1826; when did he die?—About 35 years ago.
20. Mr. *Hodnett.*] Tell him now this is the second holding. When did he get this?—Very near 10 years ago.
21. Did he know it before that, and know the tenant of it?—He says he did.
22. And did he know his rent; he was a relative of his, I believe?—He was a relative, and he knew the rent.
23. What was the old rent?—He says that it was 6*d.*, and then there was a man named Foley that lived half a mile down from him, and had another little field; that field contained 1 acre, and there was a house built on that field, and he came in as a son-in-law to Costine.
24. We don't want these details; does he remember when the rent was raised?—Fifteen or 17 years ago it was raised to 5*l.* 10*s.*
25. He got it himself 10 years ago?—Yes.
26. What did he pay Foley to get in?—£12.
27. And I suppose some arrears of rent to the landlord?—Foley paid it.
28. Did he pay Foley?—He says he did.
29. What did he do since he went in there himself?—He says he reclaimed about 3¼ acres that was growing furze.
30. Did he do any fencing?—He built a few perches.
31. Did he remove two old ruins that were there?—He says he did.
32. And is he able to till the land that was covered there?—He says he is not, for it is very hard to get it tilled; some of it is growing grass and some is not.
33. Ask him had Foley's people reclaimed the land from being originally mountain?—It was all a mountain.
34. And did Foley's people reclaim it?—He says they did, except 5 acres 20 perches of mountain, and that is on it still unreclaimed.
35. He was living on the mountain?—He was living quite convenient on the boundary.
36. Mr. *Verlin.*] Did you ever hear about Michael Costine?—He says he did, for that was the first man that had the land
37. Well, I produce the lease (*produced*). Do you remember when Costine died; how long had he it for the 6*d.*?—From the year of the voting until he died.
38. When did he die?—He cannot exactly tell.
39. Mr. *FitzGerald.*] About how many years ago?—24 or 25 years ago.
40. Mr. *Verlin.*] Whatever time he died the rent was not raised until 1875?—Yes.
41. He married Foley's daughter?—Yes.
42. Foley had 1 acre 1 rood before that that he paid 5*s.* for?—He says he had, but he thinks it was himself that fixed that between them, and there was a house on it.
43. Used he not pay 5*s.* to Dromana for it?—He says it was an agreement between himself and his brother.
44. Where did he get the 23*l.* that he paid to get this holding in 1887?—He says he earned the most of it with his spade and shovel through the country.
45. It was not out of the first holding he earned it?—It was not, but earned it round the country.

Richard Mooney, sworn.

46. Mr. *Hodnett.*] You valued these lands?—Yes; 13*s.* 11*d.* on the first holding.
47. Mr. *FitzGerald.*] Is that as it stands, or allowing for reclamation?—As it stands, sir.
48. Did you make a gross valuation?—I did; 13*s.* 11*d.*
49. What is your net valuation?—I mean the net valuation is 13*s.* 11*d.*
50. What is your gross?—I made no gross.
51. How can you make a net without a gross?—Because I think the land is only worth 13*s.* 11*d.*
52. Mr. *O'Brien.*] That is, the land in its natural state is only worth 13*s.* 11*d.*?—Yes, because it is not able to grow anything except with artificial manure; it is from using guano and manure that they can get any crop at all off the land.
53. Mr. *FitzGerald.*] The second holding?—£1. 8*s.* 9*d.*
54. Mr. *Hodnett.*] I presume you are giving the tenant credit for the improvements?—Yes.
55. In that valuation?—Certainly.
56. Mr. *Verlin.*] How much credit did you give him; supposing you were letting the two holdings to-morrow, what would you put on them as rent for a new comer?—About 2*l.* 2*s.* 9*d.*
57. Would you give it to a stranger the same as to Mr. Moore?—Yes; because, in fact, this mountain land, unless a person knew it and was living quite close to it, it was almost impossible to value it. It is not from the land they earn it.
58. What cattle do these two holdings keep?—Morrissey might keep two cows, but then I don't think the land would be able to support so many cows. If they were trusting to the land alone the cattle would give no milk; he must go to the shop and buy meal for them.
59. Would it keep three cows?—I don't think so.
60. How much a cow would you give for rent on that land?—Supposing the cows were living on the land alone, they would run dry and would give no milk at all.
61. Supposing the land could feed three cows?—It could not, I tell you.

Henry Villiers Stuart, sworn.

62. Mr. *Verlin.*] How much land have you on hands at present?—My father has about 1,200 acres.
63. And you look after that, I believe?—Yes.
64. Have you looked at these two holdings that are now in court?—Yes; on the 18th of this month.
65. As to the small holding, what do you consider would be a fair rent for it?—I consider the present value of the small holding is 2*l.* 5*s.* I made an allowance of 10*s.* for want of water in a dry summer.
66. The second holding, what do you consider the letting value of that?—I worked it out to 5*l.* 7*s.* I made an allowance in that case of 1*l.* for want of water; he has about 400 yards to go for it in a dry summer. The gross value was 6*l.* 7*s.*
67. Mr. *FitzGerald.*] Did you see the reclamation that had been effected there; could you form any estimate of what that would cost per acre?—It is the result of a long series of years' work; it is not reclamation that could be done in a short time. I have no doubt they improved it from time to time; I cannot see any very recent efforts.
68. You could not form any idea of what would be the cost of bringing it into a reclaimed state?—I did not work it out, but the rate of wages at the time the reclamation was made was very different from what it is now. I think it would probably cost about 10*l.* the statute acre.
69. Mr. *O'Brien.*] What kind of land is it?—It is rather a loose soil with a shingly subsoil; it varies in depth.
70. What would be the work done on it that would cost 10*l.* an acre?—They would have to stub furze; I suppose there was furze on it before; and take away stones and grub it.
71. Mr. *Hodnett.*] I suppose you know something more about military matters than agriculture?—No; I am called Captain Stuart to distinguish me from my father. I am a militiaman.
72. You will succeed to the estate in the natural course of events?—Yes.
73. And you are interested in maintaining the rents?—I am on my oath, and I am asked the value of this land.
74. And you see nothing incongruous in being asked to fix a fair rent on your own property?—Nothing, any more than asking a tenant to give his fair rent.
75. And you think it would take 10*l.* to reclaim this land?—At the then rate of wages.
Mr. *Hodnett.*] Very well, then, I will accept that.

John Morrissey, Tenant; *H. Villiers Stuart*, Landlord.—*John Morrissey*, sworn.

76. Mr. *Hodnett.*] You have been here all your life?—I have.
77. And your father was there before you?—My father was there before me.
78. Was it you put up all these improvements?—It was.
79. And built all the fences?—Yes, sir.
80. What drainage did you do?—I made a lot of drains; the surveyor has them.
81. Three hundred and fifty-three perches?—Yes.
82. The surveyor is dead?—Yes; but I was keeping the chain, and he wrote it down for me.
83. You planted some trees?—I did.
84. Was this an old leasehold?—It was my father had it, and my grandfather.
85. When did the lease fall out?—I think it was 18 years ago.
86. Mr. Laurence Dennehy was then the agent and solicitor to the property?—He was. Sixpence a year my father used to pay; it was not worth more when my father got it.
87. In 1883 you got this ejectment (*produced*)?—Yes.
88. And then the rent was raised to 5*l.* 10*s.*?—It was.
89. The first receipt for 5*l.* is 10th December 1876?—I got two ejectments then, and I have the wrong one here. This appears to be the first receipt for the new rent in 1876.
90. I suppose you pay all the county cess?—I did.
91. What is your nearest market town?—Dungarvan; and very hard to get out of the place. Eight miles from this place all mountain; all bleak mountain, and some of it not reclaimed yet.
92. It would cost you fully what Mr. Stuart said to reclaim it?—I engage Mr. Stuart himself could not reclaim Mountstuart for the same money, and it is going back again. My father killed himself and myself reclaiming.
93. Mr. *Verlin.*] You are after swearing to the court that this holding of yours was all black mountain?—It was all black mountain when my father got it.
94. Do you remember it to be all black mountain?—I heard my father saying it.

95. How

95. How much of it do you remember to be black mountain ?—I reclaimed two acres myself out of the black mountain.

96. How much is black mountain now ?—Two acres or more.

97. And you say you reclaimed two acres ?—Yes.

98. Did your father tell you that he got this lease in 1826 ?—He did.

99. Did you hear at the time of the lease that it was "The dwelling-house and part of the mountain lands enclosed and cultivated by Michael Morrissey." Did your father tell you it was cultivated in 1826 ?—He did not.

100. Do you know that it was reclaimed before the Sappers and Miners came around ?—Some of it.

101. It appears on the map as cultivated in 1842 ?—Some of it.

102. And you had it from 1826 to 1874 for 6*d.* ?—Yes ; and I would want it for nothing to make anything out of it.

103. What stock have you on it ?—A couple of cows, but I have to feed out of hands at the door.

104. What else have you ?—I would rear a calf.

105. Do you keep young stock, yearlings or sheep ?—I do not.

106. Have you not a yearling there at the present moment ?—It is a yearling now, but I must sell them, I have no feeding for them.

107. Have you not two yearlings there, and a horse ?—I have a horse sometimes.

108. And two cows ?—Two cows ; I have not a drop of milk to drink from them and won't until next July.

109. Mr. *O'Brien.*] What buildings did you make on the place yourself ?—A dwelling-house about 20 years ago.

110. Anything else ?—I built a cowhouse about three years ago, and I built a little barn.

111. Mr. *Verlin.*] Have you any land besides this ?—There is a field of 3 acres on Moreenane ; it is all the same.

112. What is in the Court now is your only holding ?—That is all.

113. And you have lived on it 18 years at the present rent ?—I did, and my brothers and sisters sent me money from America, and I myself earning around about the country.

114. Is it good for potatoes ?—I have a field of oats and I could not put it down yet.

115. Is it good for potatoes ?—It is not ; sometimes we would have one along with all the manure we put on, and we must buy 5*l.* worth of guano for every little acre to knock a crop out of it ; it is black mountain.

Richard Mooney, examined.

116. Mr. *Hodnett.*] What value did you put on this ?—1*l.* 12*s.* 4½*d.*

117. Mr. *Verlin.*] Did you value that on the same principles as the last ?—Yes.

118. But you would not tell us how you did it, it is a secret ?—By the quality of the land.

119. Is that the full letting value ?—It is what I would let it for.

H. V. Stuart, examined.

I make it 5*l.* 12*s.*

120. Mr. *Verlin.*] Is that what you consider the present letting value ?—Which I consider the present letting value. I take 1*l.* off for a bad approach ; it is half-a-mile to the public road.

121. Mr. *Hodnett.*] Does it present the appearance of having been reclaimed ?—Yes.

122. Have you any doubt that it was in black mountain ?—There is 2½ acres by the river that could not have ever been black mountain, and I doubt that a great deal of it was ever black mountain.

123. Does it not present evidence of having been reclaimed ?—Oh, it does ; the land was reclaimed, of course.

JUDGMENT.—27th April 1894.

Mr. Commissioner *O'Brien.*] The two holdings of Patrick Moore and that of John Morrissey are of the same character, and have practically the same history ; they were let in 1826 at a nominal rent of 6*d.* each, and after 1870 Moore's rents were raised to 18*s.* 9*d.* and 5*l.* 10*s.*, and Morrissey's to 5*l.* 10*s.* They are high-lying mountain farms and in an exposed situation, difficult of access. The taxes in the district amount to 6*s.* in the pound. The tenants reclaimed, fenced, and built upon these holdings. It is not suggested that the landlord ever spent one penny upon them, he estimated the cost of the tenant's reclamation alone at 10*l.* an acre, and I don't think the estimate excessive for this class of land and work. The landlord in claiming the present value of these farms as rent relies on the latter part of the 4th section of the Land Act of 1870, and the decision in Adams *v.* Dunseath by which it is the law that the time during which a tenant has had the use and enjoyment of his own improvements is to be counted compensation made to him by the landlord. I admit, of course, that this is the law, and there are cases in which it may be applicable. But while the judgment in Adams *v.* Dunseath laid down certain general principles their application in any particular case, such as this is, as Chief Justice May pointed out, a matter of valuation to be entertained by an intelligent tribunal. It seems to me that this doctrine of compensation by enjoyment cannot apply unless concurrent with the enjoyment there has been a benefit received by the tenant by way of profit on his outlay. These farms have been created by the tenants at a cost which is quite incommensurate with any return that has been obtained or could be now expected from the outlay. They were not reclaimed for profit in a commercial sense but for existence ; they would not sell for what the landlord estimates was spent on reclamation alone, and even in more prosperous times could not have returned an agricultural profit, much less so now. The tenants who won these holdings from the mountain could not rest and enjoy the fruits of their labour, for the evidence and the report shows that continuous toil and unceasing struggle is required to prevent the lands reverting to their natural condition of heath, and furze, and wild mountain. I cannot hold that the tenants have been compensated in any sense, legal or not ; nor do I think they have had much enjoyment for their outlay. One of the tenants admits the ownership of three cows, but the land would not keep them, and we are not to fix a rent on his stock or capital, but on his holding. In my opinion no length of tenure at a nominal rent would compensate the tenants in such cases for their outlay and improvements. The holdings have been created at a cost in excess of what they ever would have sold for. They were maintained and preserved only by continuous and unremunerative outlay from relapsing into barren mountain again. The taxes are so high that that would almost constitute a rent in an economic sense. The Sub-Commissioners' rents appear to me to be too high. I think the rent should be Patrick Moore, 15*s.* and 30*s.*, Morrissey's, 1*l.* 15*s.*

Mr. Justice *Bewley.*] In this case, owing to the difference of opinion in the Court, it is necessary that I should state very briefly the reasons which prevent Mr. FitzGerald and myself from adopting the views that have been expressed by Mr. Commissioner O'Brien. As to the law of the case as stated by Mr. O'Brien, there can be no doubt. Under the concluding paragraph of Section 4 of the Land Act of 1870 the Court was bound, when assessing compensation for improvements, to take into consideration in reduction of the claim of the tenant, first, the time during which he had enjoyed the improvements, secondly, the rent at which the holding had been let, and, thirdly, any benefits received from the landlord in consideration expressedly or impliedly of the improvements. By Section 3 of the Land Act of 1881, Sub-section 9, the tenant is to be exempted from rent on improvements, in respect of all improvements made by him or any of his predecessors in title, for which,

in the opinion of the Court, the tenant, or his predecessors in title, shall not have been paid or otherwise compensated by the landlord or his predecessors in title. And, as mentioned by Mr. O'Brien, the Court of Appeal in Adams *v.* Dunseath (10 L. R. Ir.) decided that this concluding part of the 4th section of the Act of 1870 should be acted on and taken into account by the Land Commission when fixing rents under the Act of 1881; therefore the question we have to consider in this case is how far this principle, so well established, is applicable to the cases that are now before us. First we have two cases in which Patrick Moore is tenant, and as they are somewhat differently circumstanced, I shall refer to the second of these cases first. In that case the lands were held under a lease, bearing date 1st May 1826, made by the then Mr. Villiers Stuart, of Dromana, to a man of the name of Michael Costine, for his own life, at a nominal rent of 6*d.* a year. It appears that prior to the date of that lease, this holding, which contains a little over 20 statute acres, had been reclaimed by Michael Costine, and had been enclosed from the mountain, and, in consequence of that, apparently he was given this lease at this nominal rent. The lands in that lease and the subject matter of the holding are described in these words: "The dwelling-house and that part of the mountain of Slievegrue, called or known by the name of part of Rusheens, enclosed and cultivated by the said Michael Costine, and now in his possession." What happened then was that for 50 years Michael Costine and his successors in title held that holding at practically no rent, a rent of 6*d.* a year. On the expiration of the lease, which did not apparently take place until about 1876, the rent was fixed at 5*l.* 10*s.* a year, which amounted to about 5*s.* the statute acre, and that continued until the time the proceedings in this case were instituted. Now unfortunately when the case went before the Sub-Commission, owing to some press of business, the holding was only valued and visited by one of the Sub-Commissioners, and the case was disposed of practically by him and without the assistance of the Legal Assistant Commissioner to direct him on the question of law. What we have to consider now in this particular case is, was the enjoyment of this holding for 50 years at a rent of 6*d.* a year compensation for the entire or portion of the improvements effected by the original lessee or his predecessors prior to the date of the lease. On that point the Court Valuers, gentlemen of very great experience, have made a most careful valuation of the holding, and estimate the fair rents at 4*l.* 5*s.* if the improvements were not taken into account. And we know that if the rent now is 4*l.* 5*s.*, if this were in the hands of the landlord 10 or 20, or 30 years ago, the fair rent would have been a higher sum. Therefore, I think, we may reasonably conclude that Costine and those who succeeded him had a holding that was worth at least 4*l.* or 4*l.* 5*s.* a year for nothing a year for a period of 50 years, that is to say, that practically for 50 years they had a profit of 4*l.* a year out of the holding. It seems to me plain to demonstration that that was not only partial conpensation but complete compensation for any improvements in respect of this holding. In considering this case and the other two cases on the same estate, in the first place we put no rent upon buildings at all, in the next place we take into consideration the fact which is undoubted, that holdings of this nature require continuous expenditure both of labour and manure to prevent them from reverting into their natural state of heather and furze. But taking all these things into account, which was taken into account by the Court Valuers, we think that in the second of these cases 4*l.* a year would be a fair rent; in doing that we have assessed no rent upon any improvements at all except this reclamation, which we think was entirely paid for by allowing the tenant or his predecessor to remain in occupation for 50 years at no rent. The first of the cases of Patrick Moore is somewhat differently circumstanced; no doubt there was a similar lease in this case, but it was not produced, but we have evidence that more than 35 years ago the lands were held at a nominal rent, something about 2*d.* or 6*d.* a year. We have it then that for 35 years the holding was held at a rent of 18*s.* 9*d.* a year, which is 2*s.* 6*d.* an acre. In this case we give the tenant the benefit of the doubt as to whether the improvements were executed before a similar lease to that in Michael Costine's case, and we simply assume as we find upon the evidence that the improvements at any rate were executed more than 35 years ago, and we find that for 35 years he held this land at a rent of 18*s.* 9*d.* The Court Valuers estimate that the fair letting value for a fair rent would be £2 a year. Under these circumstances, and, as I said, giving the tenant the benefit of the doubt, in this case we think that we cannot hold that the improvements have been entirely compensated, and therefore we fix the rent at 1*l.* 10*s.*, giving a permanent abatement of 10*s.* to satisfy any improvements that have been not already paid for or otherwise compensated. The third case of John Morrissey is precisely similar to the second case of Patrick Moore. The lands there were held originally under a lease bearing the same date, 1st May, 1826, made to a man named Michael Morrissey. It appears from the description in the lease, that these lands had been enclosed and cultivated and reclaimed prior to the date of the lease by Michael Morrissey; they were let to him for his life for 6*d.* a year, and this lease seems to have existed for precisely the same time, namely for a period of 50 years, so we have an enjoyment of this land for 50 years at a rent of 6*d.* a year. In this case the Court Valuer has stated that the fair rent, not taking reclamation into account, would be 4*l.* 10*s.* a year. Having regard to all the facts of the case, the poor nature of this holding and all its drawbacks, we think that 4*l.* a year would be a fair rent, as in the second of Moore's cases. I need only say in conclusion that I fail entirely to understand why improvements of this nature cannot be satisfied by a long holding at a nominal rent; it seems to me the logical conclusion of Mr. O'Brien's judgment would be that the holding ought to be held at 6*d.* a year for ever, otherwise I see no alternative at all. Either the improvements have been satisfied by holding for a length of time at a nominal rent, or they have not been satisfied at all. For the reasons I have stated, we are of opinion that in two of the cases they have been entirely satisfied, and in the third case partially satisfied.

APPENDIX, No. 11.

PAPER handed in by Mr. Justice *Bewley*.

RETURN, according to Provinces and Counties, of the Number of Applications to fix Fair Rents in the Land Commission Court which have been excluded from the provisions of the Land Law (Ireland) Act, 1881 and 1887, and the Redemption of Rent (Ireland) Act, 1891, for the reasons stated herein, together with the Number of Applications Struck Out and Withdrawn from the Commencement of Proceedings to the 31st March 1894.

Note.—This Return does not include decisions in Civil Bill Courts or Appeal Cases.

APPENDIX, No. 11.

PAPER handed in by Mr. Justice *Bewley*.

SUMMARY.

Province.	County.	Not Agricultural or Pastoral. Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Ulster	Antrim	45	3	10	3	3	21
	Armagh	33	3	15	1	4	7
	Cavan	15	3	19	4	1	1
	Donegal	37	4	13	3	–	7
	Down	46	2	23	–	3	12
	Fermanagh	28	7	8	8	1	5
	Londonderry	19	–	–	1	1	5
	Monaghan	20	2	15	–	2	3
	Tyrone	44	–	26	1	1	5
	Total	287	24	129	21	16	66
Leinster	Carlow	10	2	18	2	2	2
	Dublin	29	4	2	2	1	4
	Kildare	5	–	2	4	5	2
	Kilkenny	26	7	7	3	–	1
	King's	8	2	9	8	1	1
	Longford	11	3	13	2	1	–
	Louth	19	1	4	3	2	4
	Meath	14	2	8	8	1	4
	Queen's	19	4	30	7	2	7
	Westmeath	15	5	6	3	–	1
	Wexford	25	5	22	–	3	2
	Wicklow	8	2	7	2	–	3
	Total	189	37	128	44	18	31
Connaught	Galway	57	11	29	38	4	3
	Leitrim	9	4	13	2	–	–
	Mayo	8	8	15	30	2	–
	Roscommon	28	1	13	13	1	1
	Sligo	19	1	9	8	1	2
	Total	121	25	79	91	8	6
Munster	Clare	26	7	19	20	2	2
	Cork	41	10	53	11	4	17
	Kerry	15	4	9	7	1	6
	Limerick	27	7	3	16	2	5
	Tipperary	25	10	19	10	1	6
	Waterford	20	2	3	1	–	3
	Total	154	40	106	65	10	39
ULSTER		287	24	129	21	16	66
LEINSTER		189	37	128	44	18	31
CONNAUGHT		121	25	79	91	8	6
MUNSTER		154	40	106	65	10	39
	Total	751	126	442	221	52	142

* Note.—The Heading "Other Causes" includes a variety of causes too numerous to be classified in separate columns, such as:—"Tenants would not allow inspection." "Dismissed by consent." "Applicant refused to have rent fixed unless commonage or turbary was included in area." "Tenant ceased to have interest in Holding," &c., &c.

APPENDIX, No. 11.

PAPER handed in by Mr. Justice *Bewley*.

SUMMARY.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already Fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck Out and Withdrawn.	Total Dismissed, Struck Out, and Withdrawn.
35	37	4	9	11	18	48	247	2,303	2,550
80	16	29	7	11	33	58	297	2,457	2,754
16	22	14	23	3	6	34	161	1,586	1,747
170	33	77	21	4	59	50	478	3,171	3,649
52	22	30	14	16	28	54	302	3,502	3,804
17	18	8	22	12	14	18	166	1,680	1,846
11	6	2	3	7	14	34	103	2,133	2,236
36	24	5	14	1	22	29	173	1,838	2,011
37	7	32	4	15	51	64	287	3,003	3,290
454	185	201	117	80	245	389	2,214	21,673	23,887
9	5	–	3	8	18	14	93	462	555
10	7	1	2	5	13	6	86	359	445
10	9	3	1	4	17	4	72	449	521
22	13	5	16	11	23	22	156	780	936
16	16	4	8	5	9	5	92	551	643
6	9	5	4	2	12	3	71	511	582
8	4	–	5	–	10	4	64	474	538
14	8	3	1	4	9	15	91	530	621
11	8	7	3	6	20	15	139	764	903
10	11	11	1	14	21	2	100	568	668
19	14	2	7	5	13	12	129	797	926
2	1	3	3	2	6	4	43	486	529
143	105	44	54	66	171	106	1,136	6,731	7,867
242	92	63	66	35	99	158	897	3,710	4,607
45	23	15	27	8	19	32	197	1,230	1,427
251	106	165	70	44	77	97	873	4,824	5,697
39	52	57	174	29	45	65	518	1,374	1,892
39	14	24	48	7	16	36	224	1,268	1,492
616	287	324	385	123	256	388	2,709	12,406	15,115
34	18	4	4	39	28	28	231	1,054	1,285
89	22	14	22	62	58	125	528	2,970	3,498
76	36	16	22	25	59	55	331	1,405	1,736
18	13	7	12	12	43	16	181	865	1,046
32	20	16	9	17	14	45	224	1,496	1,720
7	6	1	8	5	17	14	87	582	669
256	115	58	77	160	219	283	1,582	8,372	9,954
454	185	201	117	80	245	389	2,214	21,673	23,887
143	105	44	54	66	171	106	1,136	6,731	7,867
616	287	324	385	123	256	388	2,709	12,406	15,115
256	115	58	77	160	219	283	1,582	8,372	9,954
1,469	692	627	633	429	891	1,166	7,641	49,182	56,823

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER.

COUNTY OF ANTRIM.

PERIOD.	Not Agricultural or Pastoral. — Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	1	–	–	–	1	1
" " - - - 1883 -	2	2	–	–	1	7
" " - - - 1884 -	5	1	–	–	–	3
" " - - - 1885 -	2	–	–	–	–	–
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	1	–	–	–	1	2
" " - - - 1888 -	1	–	–	–	–	1
" " - - - 1889 -	10	–	1	–	–	1
" " - - - 1890 -	5	–	3	–	–	1
" " - - - 1891 -	10	–	5	–	–	3
From 22nd August 1891 to 31st March 1893 -	7	–	–	–	–	1
Year ended 31st March - - - 1894 -	1	–	1	3	–	1
TOTAL - - -	45	3	10	3	3	21

COUNTY OF ARMAGH.

Year ended 22nd August - - - 1882 -	1	–	1	–	–	–
" " - - - 1883 -	7	1	3	–	1	–
" " - - - 1884 -	3	1	2	1	2	1
" " - - - 1885 -	5	–	–	–	1	2
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	2	–	–	–	–	–
" " - - - 1888 -	2	–	–	–	–	–
" " - - - 1889 -	5	–	8	–	–	–
" " - - - 1890 -	1	–	–	–	–	–
" " - - - 1891 -	2	1	–	–	–	4
From 22nd August 1891 to 31st March 1893 -	3	–	1	–	–	–
Year ended 31st March - - - 1894 -	2	–	–	–	–	–
TOTAL - - -	33	3	15	1	4	7

COUNTY OF CAVAN.

Year ended 22nd August - - - 1882 -	1	1	–	–	–	–
" " - - - 1883 -	1	1	7	2	–	–
" " - - - 1884 -	3	1	1	–	–	1
" " - - - 1885 -	1	–	–	–	–	–
" " - - - 1886 -	1	–	1	–	–	–
" " - - - 1887 -	1	–	1	–	–	–
" " - - - 1888 -	–	–	–	–	–	–
" " - - - 1889 -	–	–	2	2	–	–
" " - - - 1890 -	3	–	1	–	–	–
" " - - - 1891 -	3	–	3	–	1	–
From 22nd August 1891 to 31st March 1893 -	–	–	3	–	–	–
Year ended 31st March - - - 1894 -	1	–	–	–	–	–
TOTAL - - -	15	3	19	4	1	1

COUNTY OF DONEGAL.

Year ended 22nd August - - - 1882 -	1	–	1	–	–	1
" " - - - 1883 -	6	–	2	–	–	1
" " - - - 1884 -	5	–	1	–	–	1
" " - - - 1885 -	2	–	–	1	–	1
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	–	–	–	1	–	–
" " - - - 1888 -	8	–	3	1	–	2
" " - - - 1889 -	2	1	2	–	–	–
" " - - - 1890 -	4	1	1	–	–	–
" " - - - 1891 -	3	2	–	–	–	–
From 22nd August 1891 to 31st March 1893 -	5	–	1	–	–	–
Year ended 31st March - - - 1894 -	1	–	2	–	–	1
TOTAL - - -	37	4	13	3	–	7

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER.

COUNTY OF ANTRIM.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck Out and Withdrawn.	TOTAL Dismissed, Struck Out, and Withdrawn.
2	4	–	1	–	1	–	11	86	97
10	7	–	2	5	7	10	53	974	1,027
3	5	–	–	1	1	8	27	252	279
–	–	–	–	1	3	–	6	68	74
1	–	–	–	1	–	3	5	12	17
4	7	1	–	1	1	6	24	20	44
–	1	–	–	–	–	7	10	55	65
2	2	–	–	–	–	7	23	198	221
1	4	–	–	–	.	5	19	140	159
4	6	2	3	1	3	2	39	265	304
5	–	–	2	1	–	–	16	94	110
3	1	1	1	–	2	–	14	139	153
35	37	4	9	11	18	48	247	2,303	2,550

COUNTY OF ARMAGH.

–	5	4	–	–	2	5	18	77	95
8	–	17	–	2	3	8	50	1,098	1,148
7	2	2	1	2	15	15	54	665	719
3	2	–	–	1	3	3	20	119	139
–	–	–	1	–	2	3	6	11	17
–	–	–	–	1	–	–	3	11	14
3	1	1	1	–	–	8	16	30	46
47	3	3	–	3	3	3	75	209	284
5	1	1	–	–	–	6	14	76	90
2	1	1	2	2	2	7	24	89	113
4	–	–	–	–	1	–	9	47	56
1	1	–	2	–	2	–	8	25	33
80	16	29	7	11	33	58	297	2,457	2,754

COUNTY OF CAVAN.

–	4	10	–	1	–	2	19	199	218
2	–	–	–	–	2	8	23	505	528
3	–	–	–	–	2	6	17	141	158
1	–	–	–	–	–	2	4	12	16
–	–	–	–	–	–	5	7	32	39
–	2	–	–	1	–	–	5	34	39
2	–	1	–	–	–	7	10	38	48
2	5	–	–	1	2	2	16	107	123
1	3	3	1	–	–	1	13	211	224
1	2	–	12	–	–	–	22	175	197
2	4	–	8	–	–	1	18	83	101
2	2	–	2	–	–	–	7	49	56
16	22	14	23	3	6	34	161	1,586	1,747

COUNTY OF DONEGAL.

4	11	5	1	–	1	–	25	126	151
14	1	4	–	1	8	5	42	755	797
87	4	50	2	2	12	5	169	522	691
14	2	–	5	–	9	5	39	77	116
–	–	–	–	–	–	–	–	28	28
–	1	2	3	–	4	3	14	27	41
2	3	3	1	–	1	14	38	105	143
2	2	5	1	–	5	4	24	270	294
19	3	2	–	1	8	9	48	602	650
12	1	–	2	–	1	3	24	206	230
11	1	–	4	–	3	–	25	139	164
5	4	6	2	–	7	2	30	314	344
170	33	77	21	4	59	50	478	3,171	3,649

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER—*continued.*

COUNTY OF DOWN.

PERIOD.	Not Agricultural or Pastoral. Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	1	–	–	–	–	–
" " - - - 1883 -	4	–	6	–	–	–
" " - - - 1884 -	3	–	3	–	2	2
" " - - - 1885 -	4	–	–	–	–	–
" " - - - 1886 -	4	–	–	–	–	–
" " - - - 1887 -	–	–	1	–	1	1
" " - - - 1888 -	4	–	5	–	–	3
" " - - - 1889 -	5	1	3	–	–	1
" " - - - 1890 -	3	1	3	–	–	2
" " - - - 1891 -	7	–	–	–	–	2
From 22nd August 1891 to 31st March 1893 -	5	–	1	–	–	–
Year ended 31st March - - - 1894 -	6	–	1	–	–	1
TOTAL - - -	46	2	23	–	3	12

COUNTY OF FERMANAGH.

Year ended 22nd August - - - 1882 -	2	–	1	–	–	–
" " - - - 1883 -	6	3	–	–	–	1
" " - - - 1884 -	3	2	1	2	1	1
" " - - - 1885 -	3	1	–	1	–	–
" " - - - 1886 -	–	1	–	1	–	1
" " - - - 1887 -	1	–	–	–	–	–
" " - - - 1888 -	1	–	–	–	–	–
" " - - - 1889 -	3	–	2	3	–	–
" " - - - 1890 -	1	–	3	–	–	–
" " - - - 1891 -	6	–	–	–	–	1
From 22nd August 1891 to 31st March 1893 -	1	–	–	1	–	–
Year ended 31st March - - - 1894 -	1	–	1	–	–	1
TOTAL - - -	28	7	8	8	1	5

COUNTY OF LONDONDERRY.

Year ended 22nd August - - - 1882 -	–	–	–	–	–	–
" " - - - 1883 -	1	–	–	1	–	–
" " - - - 1884 -	1	–	–	–	–	–
" " - - - 1885 -	–	–	–	–	–	–
" " - - - 1886 -	–	–	–	–	1	3
" " - - - 1887 -	2	–	–	–	–	–
" " - - - 1888 -	2	–	–	–	–	–
" " - - - 1889 -	8	–	–	–	–	–
" " - - - 1890 -	4	–	–	–	–	2
" " - - - 1891 -	–	–	–	–	–	–
From 22nd August 1891 to 31st March 1893 -	1	–	–	–	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	–
TOTAL - - -	19	–	–	1	1	5

COUNTY OF MONAGHAN.

Year ended 22nd August - - - 1882 -	1	–	3	–	–	–
" " - - - 1883 -	6	–	4	–	–	–
" " - - - 1884 -	1	–	–	–	–	–
" " - - - 1885 -	–	–	–	–	–	–
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	2	–	–	–	–	–
" " - - - 1888 -	–	–	–	–	–	–
" " - - - 1889 -	2	2	1	–	1	1
" " - - - 1890 -	–	–	–	–	–	–
" " - - - 1891 -	6	–	–	–	1	–
From 22nd August 1891 to 31st March 1893 -	–	–	4	–	–	–
Year ended 31st March - - - 1894 -	2	–	3	–	–	2
TOTAL - - -	20	2	15	–	2	3

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER—*continued.*

COUNTY OF DOWN.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck out, and Withdrawn.
4	–	6	–	–	1	4	16	110	126
5	–	1	–	1	9	5	31	1,041	1,072
2	–	–	–	2	2	3	19	340	359
1	2	1	–	6	1	3	18	49	67
–	–	–	–	–	2	1	7	10	17
2	–	1	–	1	3	–	10	32	42
6	3	6	–	2	2	5	36	134	170
12	3	7	4	1	–	19	56	615	671
6	–	1	3	2	1	6	28	536	564
9	8	6	3	1	5	8	40	523	572
3	1	–	3	–	1	–	14	61	75
2	5	1	1	–	1	–	18	51	69
52	22	30	14	16	28	54	302	3,502	3,804

COUNTY OF FERMANAGH.

1	3	–	–	–	1	2	10	75	85
2	1	2	–	4	3	5	27	706	733
2	8	–	1	3	2	7	33	536	569
4	1	2	15	–	5	–	32	43	75
–	–	1	–	–	–	–	4	46	50
2	–	2	1	3	–	–	9	33	42
–	–	–	1	1	–	3	6	35	41
1	3	–	–	1	–	–	13	64	77
–	–	–	1	–	2	–	7	49	56
3	–	1	–	–	–	1	12	49	61
1	1	–	1	–	–	–	5	27	32
1	1	–	2	–	1	–	8	17	25
17	18	8	22	12	14	18	166	1,680	1,846

COUNTY OF LONDONDERRY.

–	–	–	–	–	–	–	–	123	123
1	–	–	–	4	8	–	15	1,363	1,378
3	–	–	–	–	1	8	13	324	337
–	–	–	–	–	–	15	15	36	51
–	–	–	–	–	–	4	8	16	24
2	–	–	1	1	1	–	7	18	25
1	1	–	–	1	1	–	6	20	26
1	1	–	–	1	3	–	14	47	61
3	4	–	2	–	–	3	18	103	121
–	–	–	–	–	–	–	–	4	4
–	–	–	–	–	–	4	5	58	63
–	–	2	–	–	–	–	2	21	23
11	6	2	3	7	14	34	103	2,133	2,236

COUNTY OF MONAGHAN.

–	–	–	–	–	–	1	5	96	101
2	–	–	–	–	4	11	27	458	485
7	–	–	–	–	5	6	19	124	143
1	–	1	–	1	4	2	9	53	62
–	–	1	1	–	2	2	6	12	18
1	–	–	–	–	–	–	3	12	15
2	–	3	–	–	–	1	6	50	56
12	20	–	5	–	5	3	52	240	292
3	1	–	3	–	2	1	10	561	571
1	1	–	1	–	–	2	12	82	94
5	2	–	3	–	–	–	14	120	134
2	–	–	1	–	–	–	10	30	40
36	24	5	14	1	22	29	173	1,838	2,011

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER—*continued.*

COUNTY OF TYRONE.

PERIOD.	Not Agricultural or Pastoral. — Residential.	Desmesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	–	–	–	–	–	–
" " - - - 1883 -	3	–	5	–	–	1
" " - - - 1884 -	9	–	8	–	–	3
" " - - - 1885 -	5	–	–	–	–	1
" " - - - 1886 -	1	–	–	–	–	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	2	–	–	–	–	–
" " - - - 1889 -	10	–	7	–	–	–
" " - - - 1890 -	8	–	–	–	–	–
" " - - - 1891 -	1	–	2	–	–	–
From 22nd August 1891 to 31st March 1893 -	2	–	1	–	–	–
Year ended 31st March - - - 1894 -	3	–	3	1	1	–
TOTAL - - -	44	–	26	1	1	5

PROVINCE OF LEINSTER.

COUNTY OF CARLOW.

Year ended 22nd August - - - 1882 -	–	–	–	1	–	–
" " - - - 1883 -	1	–	2	–	–	–
" " - - - 1884 -	–	–	2	–	–	1
" " - - - 1885 -	2	–	1	–	–	1
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	4	–	4	–	1	–
" " - - - 1889 -	–	–	4	–	–	–
" " - - - 1890 -	–	2	–	–	–	–
" " - - - 1891 -	3	–	5	–	1	–
From 22nd August 1891 to 31st March 1893 -	–	–	–	1	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	–
TOTAL - - -	10	2	18	2	2	2

COUNTY OF DUBLIN.

Year ended 22nd August - - - 1882 -	2	–	–	–	–	–
" " - - - 1883 -	4	–	–	–	–	–
" " - - - 1884 -	2	–	1	–	–	–
" " - - - 1885 -	1	1	–	–	–	–
" " - - - 1886 -	1	–	–	–	–	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	1	1	–	–	–	–
" " - - - 1889 -	6	1	–	–	1	1
" " - - - 1890 -	4	–	–	–	–	–
" " - - - 1891 -	5	–	1	1	–	2
From 22nd August 1891 to 31st March 1893 -	3	1	–	1	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	1
TOTAL - - -	29	4	2	2	1	4

COUNTY OF KILDARE.

Year ended 22nd August - - - 1882 -	–	–	–	2	1	–
" " - - - 1883 -	–	–	–	–	1	–
" " - - - 1884 -	–	–	–	1	1	–
" " - - - 1885 -	1	–	–	1	–	–
" " - - - 1886 -	–	–	–	–		–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	–	–	–	–	1	1
" " - - - 1889 -	–	–	–	–	–	–
" " - - - 1890 -	2	–	–	–	–	1
" " - - - 1891 -	1	–	2	–	–	–
From 22nd August 1891 to 31st March 1893 -	–	–	–	–	1	–
Year ended 31st March - - - 1894 -	1	–	–	–	–	–
TOTAL - - -	5	–	2	4	5	2

APPENDIX, No. 11—*continued.*

PROVINCE OF ULSTER—*continued.*

COUNTY OF TYRONE.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes.	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck Out, and Withdrawn.
2	1	–	–	–	–	–	3	136	139
9	–	1	–	–	2	5	26	890	916
10	–	6	–	5	10	21	72	1,218	1,290
1	–	17	–	2	8	8	42	152	194
2	–	–	1	–	2	3	9	11	20
–	1	1	–	–	1	–	3	6	9
1	1	–	–	2	5	9	20	73	93
2	2	–	1	–	2	2	26	192	218
1	–	1	1	2	3	–	16	132	148
5	–	5	1	2	6	1	23	125	148
3	–	–	–	2	11	4	23	46	69
1	2	1	–	–	1	11	24	22	46
37	7	32	4	15	51	64	287	3,003	3,290

PROVINCE OF LEINSTER.

COUNTY OF CARLOW.

1	1	–	–	–	–	–	3	38	41
–	–	–	–	6	–	–	9	106	115
2	–	–	–	–	1	3	9	64	73
–	–	–	–	1	–	–	5	7	12
–	–	–	–	–	1	–	1	4	5
–	1	–	–	–	1	–	2	3	5
–	–	–	1	1	3	2	16	29	45
2	–	–	–	–	9	6	21	60	81
–	–	–	1	–	–	1	4	49	53
–	2	–	1	–	1	2	15	47	62
–	–	–	–	–	2	–	3	40	43
4	1	–	–	–	–	–	5	15	20
9	5	–	3	8	18	14	93	462	555

COUNTY OF DUBLIN.

–	–	–	–	5	–	–	7	55	62
–	–	–	–	–	–	–	4	29	33
1	–	–	–	–	1	–	5	19	24
1	1	–	–	–	1	–	5	9	14
–	–	–	–	–	–	–	1	3	4
1	–	–	–	–	–	–	1	2	3
–	1	–	1	–	1	–	5	24	29
2	1	–	–	–	7	5	24	48	72
–	–	–	–	–	–	–	4	15	19
2	2	–	–	–	3	1	17	61	78
3	–	1	1	–	–	–	10	88	98
–	2	–	–	–	–	–	3	6	9
10	7	1	2	5	13	6	86	359	445

COUNTY OF KILDARE.

–	1	2	–	3	4	1	14	98	112
–	–	–	–	–	3	1	5	83	88
2	–	–	–	–	1	–	5	43	48
1	–	–	–	–	–	–	3	2	5
–	1	–	–	–	1	–	2	8	10
–	–	–	–	–	–	–	–	1	1
–	–	–	1	–	1	1	5	19	24
6	2	–	–	–	2	–	10	21	31
3	1	1	–	1	1	–	10	72	82
1	–	–	–	–	2	1	7	60	67
2	3	–	–	–	–	–	6	34	40
1	1	–	–	–	2	–	5	8	13
16	9	3	1	4	17	4	72	449	521

APPENDIX, No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF KILKENNY.

PERIOD.	Not Agricultural or Pastoral. Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	-	-	-	-	-	-
" " - - - 1883 -	1	1	-	1	-	-
" " - - - 1884 -	1	-	-	-	-	-
" " - - - 1885 -	-	-	-	-	-	-
" " - - - 1886 -	-	-	-	-	-	-
" " - - - 1887 -	1	-	-	-	-	-
" " - - - 1888 -	1	-	5	-	-	-
" " - - - 1889 -	1	-	-	-	-	-
" " - - - 1890 -	8	4	1	-	-	1
" " - - - 1891 -	7	1	-	-	-	-
From 22nd August 1891 to 31st March 1893 -	6	-	-	1	-	-
Year ended 31st March - - - 1894 -	-	1	1	1	-	-
TOTAL - - -	26	7	7	3	-	1

KING'S COUNTY.

Year ended 22nd August - - - 1882 -	1	1	-	-	-	-
" " - - - 1883 -	-	-	1	-	-	1
" " - - - 1884 -	-	-	1	-	-	-
" " - - - 1885 -	-	-	1	2	-	-
" " - - - 1886 -	-	-	-	-	-	-
" " - - - 1887 -	-	-	-	2	-	-
" " - - - 1888 -	1	1	2	-	-	-
" " - - - 1889 -	-	-	1	1	-	-
" " - - - 1890 -	4	-	1	1	-	-
" " - - - 1891 -	1	-	1	-	-	-
From 22nd August 1891 to 31st March 1893 -	1	-	1	2	1	-
Year ended 31st March - - - 1894 -	-	-	-	-	-	-
TOTAL - - -	8	2	6	5	1	1

COUNTY OF LONGFORD.

Year ended 22nd August - - - 1882 -	1	-	-	-	-	-
" " - - - 1883 -	2	-	-	-	-	-
" " - - - 1884 -	1	1	6	-	1	-
" " - - - 1885 -	1	-	-	1	-	.
" " - - - 1886 -	-	-	-	-	-	-
" " - - - 1887 -	-	-	-	-	-	-
" " - - - 1888 -	2	1	4	-	-	-
" " - - - 1889 -	1	1	-	-	-	-
" " - - - 1890 -	2	-	2	-	-	-
" " - - - 1891 -	1	-	-	1	-	-
From 22nd August 1891 to 31st March 1893 -	-	-	-	-	-	-
Year ended 31st March - - - 1894 -	-	-	1	-	-	-
TOTAL - - -	11	3	13	2	1	-

COUNTY OF LOUTH.

Year ended 22nd August - - - 1882 -	-	-	-	-	-	-
" " - - - 1883 -	2	-	1	1	1	-
" " - - - 1884 -	-	-	1	-	-	-
" " - - - 1885 -	2	-	-	-	-	-
" " - - - 1886 -	1	-	-	-	-	-
" " - - - 1887 -	-	-	-	-	-	-
" " - - - 1888 -	-	-	-	-	-	2
" " - - - 1889 -	3	1	1	-	1	1
" " - - - 1890 -	8	-	1	2	-	-
" " - - - 1891 -	3	-	-	-	-	1
From 22nd August 1891 to 31st March 1893 -	-	-	-	-	-	-
Year ended 31st March - - - 1894 -	-	-	-	-	-	-
TOTAL - - -	19	1	4	3	2	4

APPENDIX, No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF KILKENNY.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck Out and Withdrawn.	TOTAL Dismissed, Struck Out, and Withdrawn.
–	–	1	1	1	5	2	10	58	68
–	1	2	–	–	5	1	12	162	174
2	–	–	–	1	–	2	6	49	55
–	–	–	–	–	3	2	5	21	26
–	–	–	–	–	–	2	2	7	9
5	–	–	–	–	–	3	9	11	20
4	2	–	4	3	–	–	19	27	46
1	2	–	2	–	6	4	16	44	60
1	4	2	2	5	1	3	32	169	201
4	–	–	4	–	1	2	19	79	98
3	–	–	1	1	1	1	14	110	124
2	4	–	2	–	1	–	12	43	55
22	13	5	16	11	23	22	156	780	936

KING'S COUNTY.

–	–	–	–	1	2	–	5	57	62
–	–	–	–	1	3	3	9	104	113
3	–	1	–	–	–	–	5	40	45
–	–	1	–	–	–	1	5	24	29
–	–	–	–	–	–	–	–	11	11
–	–	–	–	–	–	–	2	5	7
–	3	1	–	–	2	–	10	4	14
2	7	–	2	–	–	–	13	22	35
9	6	1	1	3	–	–	26	179	205
–	–	–	5	–	2	1	10	53	63
2	–	–	–	–	–	–	7	35	42
–	–	–	–	–	–	–	–	17	17
16	16	4	8	5	9	5	92	551	643

COUNTY OF LONGFORD.

–	2	–	–	–	–	1	4	27	31
–	–	3	–	1	–	–	6	146	152
–	–	–	–	–	–	–	9	16	†25
–	3	–	–	–	6	–	11	25	36
–	–	–	–	–	–	–	–	9	9
–	–	2	–	–	–	–	2	12	14
3	–	–	–	–	3	–	13	59	72
1	2	–	2	–	3	2	12	49	61
2	–	–	–	–	–	–	6	69	75
–	–	–	1	1	–	–	4	65	69
–	2	–	1	–	–	–	3	30	33
–	–	–	–	–	–	–	1	4	5
6	9	5	4	2	12	3	71	511	582

† *See* Note at foot of Table II., Report for year ended 22nd August 1885.

COUNTY OF LOUTH.

–	2	–	–	–	1	1	4	27	31
–	–	–	–	–	–	1	6	206	212
–	–	–	1	–	1	–	3	28	31
–	–	–	–	–	1	–	3	23	26
–	–	–	1	–	–	–	2	5	7
–	1	–	–	–	–	–	1	4	5
1	1	–	–	–	2	1	7	15	22
3	–	–	–	–	3	–	13	52	65
2	–	–	2	–	2	1	18	61	79
2	–	–	1	–	–	–	7	40	47
–	–	–	–	–	–	–	–	2	2
–	–	–	–	–	–	–	–	11	11
8	4	–	5	–	10	4	64	474	538

APPENDIX No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF MEATH.

PERIOD.	Not Agricultural or Pastoral. — Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	3	–	–	–	–	–
" " - - - 1883 -	–	–	–	1	–	–
" " - - - 1884 -	2	–	2	1	–	2
" " - - - 1885 -	–	–	1	–	–	–
" " - - - 1886 -	–	–	–	1	–	–
" " - - - 1887 -	–	–	–	–	1	–
" " - - - 1888 -	2	1	4	1	–	2
" " - - - 1889 -	1	–	–	–	–	–
" " - - - 1890 -	–	1	1	1	–	–
" " - - - 1891 -	4	–	–	2	–	–
From 22nd August 1891 to 31st March 1893 -	2	–	–	1	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	–
TOTAL - - -	14	2	8	8	1	4

QUEEN'S COUNTY.

Year ended 22nd August - - - 1882 -	3	–	–	–	–	–
" " - - - 1883 -	–	–	–	–	–	1
" " - - - 1884 -	2	1	2	–	–	–
" " - - - 1885 -	3	–	–	–	–	–
" " - - - 1886 -	–	–	3	–	–	–
" " - - - 1887 -	1	–	–	–	–	–
" " - - - 1888 -	–	–	2	–	1	–
" " - - - 1889 -	2	3	6	1	–	1
" " - - - 1890 -	6	–	10	3	1	3
" " - - - 1891 -	1	–	2	2	–	–
From 22nd August 1891 to 31st March 1893 -	–	–	5	1	–	–
Year ended 31st March - - - 1894 -	1	–	–	–	–	2
TOTAL - - -	19	4	30	7	2	7

COUNTY OF WESTMEATH.

Year ended 22nd August - - - 1882 -	–	–	–	–	–	–
" " - - - 1883 -	1	–	1	–	–	1
" " - - - 1884 -	2	–	–	–	–	–
" " - - - 1885 -	1	–	1	–	–	–
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	1	–	–	–	–	–
" " - - - 1888 -	2	–	–	1	–	–
" " - - - 1889 -	–	2	–	–	–	–
" " - - - 1890 -	1	1	1	1	–	–
" " - - - 1891 -	5	2	3	1	–	–
From 22nd August 1891 to 31st March 1893 -	1	–	–	–	–	–
Year ended 31st March - - - 1894 -	1	–	–	–	–	–
TOTAL - - -	15	5	6	3	–	1

COUNTY OF WEXFORD.

Year ended 22nd August - - - 1882 -	1	–	5	–	–	–
" " - - - 1883 -	5	–	–	–	–	–
" " - - - 1884 -	1	–	–	–	–	1
" " - - - 1885 -	1	3	2	–	2	–
" " - - - 1886 -	–	–	1	–	–	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	4	–	3	–	1	1
" " - - - 1889 -	1	–	–	–	–	–
" " - - - 1890 -	4	–	1	–	–	–
" " - - - 1891 -	3	1	6	–	–	–
From 22nd August 1891 to 31st March 1893 -	2	1	2	–	–	–
Year ended 31st March - - - 1894 -	3	–	2	–	–	–
TOTAL - - -	25	5	22	–	3	2

APPENDIX, No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF MEATH.

Not in Occupation. Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck out, and Withdrawn.
–	–	–	–	–	–	2	5	52	57
–	–	–	–	–	–	1	2	85	87
1	–	–	–	–	–	7	15	80	95
–	–	–	–	–	–	–	1	23	24
–	–	–	–	–	–	–	1	8	9
1	1	1	–	–	–	–	4	8	12
3	1	–	–	1	3	5	23	29	52
4	1	–	1	1	–	–	8	44	52
3	1	–	–	1	6	–	14	80	94
2	3	1	–	1	–	–	13	74	87
–	–	1	–	–	–	–	4	39	43
–	1	–	–	–	–	–	1	8	9
14	8	3	1	4	9	15	91	530	621

QUEEN'S COUNTY.

–	1	1	–	1	1	1	8	66	74
–	–	–	–	2	–	3	6	128	134
4	–	–	–	1	6	1	17	64	81
–	–	3	–	2	–	–	8	64	72
–	–	–	–	–	1	1	5	8	13
1	–	–	–	–	–	1	3	6	9
–	–	–	–	–	2	–	5	31	35
2	1	2	1	–	7	2	28	51	79
1	2	–	–	–	2	3	31	127	158
2	–	–	1	–	–	1	9	122	131
1	1	1	1	–	1	–	11	74	85
–	3	–	–	–	–	2	8	24	32
11	8	7	3	6	20	15	139	764	903

COUNTY OF WESTMEATH.

–	1	–	–	1	7	–	9	45	54
–	–	–	–	–	–	–	3	154	157
–	–	–	–	–	–	–	2	41	43
1	–	–	–	2	6	–	11	11	22
–	–	–	–	1	–	–	1	6	7
4	–	1	–	–	2	1	9	22	31
1	3	6	–	–	1	1	15	15	30
–	1	2	–	–	3	–	8	30	38
1	–	1	1	9	2	–	18	126	144
1	5	–	–	–	–	–	17	89	106
1	–	1	–	1	–	–	4	23	27
1	1	–	–	–	–	–	3	6	9
10	11	11	1	14	21	2	100	568	668

COUNTY OF WEXFORD.

–	2	–	–	–	–	1	9	58	67
1	–	–	–	2	1	–	9	140	149
–	–	–	–	–	2	2	6	52	58
–	–	–	–	–	–	1	9	41	50
–	–	–	–	–	2	1	4	13	17
1	–	–	–	–	–	–	1	–	1
3	–	2	–	3	4	2	23	33	56
6	3	–	2	–	1	2	15	39	54
–	3	–	1	–	3	1	13	181	194
5	5	–	1	–	–	–	21	139	160
3	–	–	3	–	–	2	13	78	91
–	1	–	–	–	–	–	6	23	29
19	14	2	7	5	13	12	129	797	926

APPENDIX, No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF WICKLOW.

PERIOD.	Not Agricultural or Pastoral. — Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	1	–	1	–	–	–
,, ,, - - - 1883 -	–	–	1	–	–	1
,, ,, - - - 1884 -	1	1	2	1	–	–
,, ,, - - - 1885 -	–	–	–	–	–	1
,, ,, - - - 1886 -	–	–	–	–	–	–
,, ,, - - - 1887 -	–	–	–	–	–	–
,, ,, - - - 1888 -	1	–	–	–	–	–
,, ,, - - - 1889 -	1	–	–	1	–	–
,, ,, - - - 1890 -	1	–	–	–	–	1
,, ,, - - - 1891 -	2	1	3	–	–	–
From 22nd August 1891 to 31st March 1893 -	–	–	–	–	–	–
Year ended 31st March - - - 1894 -	1	–	–	–	–	–
TOTAL - - -	8	2	7	2	–	3

PROVINCE OF CONNAUGHT.

COUNTY OF GALWAY.

Year ended 22nd August - - - 1882 -	2	–	5	2	–	–
,, ,, - - - 1883 -	4	1	4	4	–	–
,, ,, - - - 1884 -	5	1	1	4	–	–
,, ,, - - - 1885 -	3	–	3	3	1	–
,, ,, - - - 1886 -	5	1	–	4	2	–
,, ,, - - - 1887 -	3	1	1	–	–	–
,, ,, - - - 1888 -	10	3	5	5	–	–
,, ,, - - - 1889 -	6	1	3	5	–	–
,, ,, - - - 1890 -	6	–	2	2	–	–
,, ,, - - - 1891 -	5	2	3	4	1	2
From 22nd August 1891 to 31st March 1893 -	1	1	1	4	–	1
Year ended 31st March - - - 1894 -	7	–	1	1	–	–
TOTAL - - -	57	11	29	38	4	3

COUNTY OF LEITRIM.

Year ended 22nd August - - - 1882 -	–	–	5	–	–	–
,, ,, - - - 1883 -	1	2	5	1	–	–
,, ,, - - - 1884 -	1	2	–	1	–	–
,, ,, - - - 1885 -	–	–	–	–	–	–
,, ,, - - - 1886 -	–	–	–	–	–	–
,, ,, - - - 1887 -		–	–	–	–	–
,, ,, - - - 1888 -	1	–	–	–	–	–
,, ,, - - - 1889 -	2	–	–	–	–	–
,, ,, - - - 1890 -	2	–	3	–	–	–
,, ,, - - - 1891 -	–	–	–	–	–	–
From 22nd August 1891 to 31st March 1893 -	2	–	–	–	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	–
TOTAL - - -	9	4	13	2	–	–

COUNTY OF MAYO.

Year ended 22nd August - - - 1882 -	–	1	6	5	–	–
,, ,, - - - 1883 -	2	–	–	8	–	–
,, ,, - - - 1884 -	1	–	2	9	–	–
,, ,, - - - 1885 -	–	–	1	2	1	–
,, ,, - - - 1886 -	–	–	–	–	–	–
,, ,, - - - 1887 -	–	–	–	1	1	–
,, ,, - - - 1888 -	–	1	3	3	–	–
,, ,, - - - 1889 -	2	5	3	2	–	–
,, ,, - - - 1890 -	1	1	–	–	–	–
,, ,, - - - 1891 -	1	–	–	–	–	–
From 22nd August 1891 to 31st March 1893 -	1	–	–	–	–	–
Year ended 31st March - - - 1894 -	–	–	–	–	–	–
TOTAL - - -	8	8	15	30	2	–

APPENDIX, No. 11—*continued.*

PROVINCE OF LEINSTER—*continued.*

COUNTY OF WICKLOW.

No: in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck out, and Withdrawn.
–	–	–	–	–	–	1	3	19	22
–	–	–	–	1	–	–	3	83	86
–	–	1	–	–	–	–	6	28	34
–	–	1	–	–	–	–	2	86	†88
–	–	–	–	–	–	–	–	6	6
–	1	–	–	–	–	1	2	5	7
–	–	1	–	1	1	2	6	29	35
–	–	–	–	–	1	–	3	54	57
1	–	–	–	–	2	–	5	75	80
–	–	–	3	–	–	–	9	64	73
1	–	–	–	–	1	–	2	12	14
–	–	–	–	–	1	–	2	25	27
2	1	3	3	2	6	4	43	486	529

† *See* Note, Table II., Report for year 1886-87; 32 cases reinstated, and fair rents fixed, which were dismissed in September 1884.

PROVINCE OF CONNAUGHT.

COUNTY OF GALWAY.

–	7	8	–	1	2	13	40	313	353
99	–	4	–	7	10	38	171	944	1,115
96	32	36	1	21	16	52	265	1,295	1,560
10	–	1	–	4	1	5	31	384	415
2	2	3	–	–	6	3	28	27	55
3	–	–	–	1	4	2	15	21	36
–	3	–	1	–	28	2	57	76	133
11	11	2	35	–	17	25	116	166	282
10	6	1	5	–	2	6	40	195	235
8	19	–	23	1	3	9	80	167	247
3	3	8	1	–	10	1	34	77	111
–	9	–	–	–	–	2	20	45	65
242	92	63	66	35	99	158	897	3,710	4,607

COUNTY OF LEITRIM.

1	6	2	1	–	2	1	18	127	145
–	1	–	8	–	–	11	29	212	241
7	–	3	–	1	1	6	22	271	293
6	1	7	2	7	5	5	33	56	89
–	–	2	–	–	2	–	4	33	37
–	1	–	–	–	–	–	1	11	12
11	3	–	5	–	–	3	23	108	131
1	1	–	–	–	4	1	9	37	46
6	2	–	2	–	–	–	15	100	115
2	3	–	2	–	3	1	11	157	168
7	2	1	2	–	2	2	18	90	108
4	3	–	5	–	–	2	14	28	42
45	23	15	27	8	19	32	197	1,230	1,427

COUNTY OF MAYO.

8	–	4	1	8	6	7	46	351	397
77	2	55	–	26	–	45	215	1,760	1,975
102	21	57	–	2	3	18	215	1,500	1,715
3	1	–	–	–	31	5	44	239	283
–	–	–	–	–	–	1	1	10	11
–	5	–	1	–	1	–	9	5	14
30	21	3	28	4	8	4	105	155	260
14	27	39	6	2	6	5	111	198	309
8	17	–	31	2	16	11	87	366	453
4	8	–	1	–	3	1	18	183	201
2	4	–	1	–	2	–	10	46	56
3	–	7	1	–	1	–	12	11	23
251	106	165	70	44	77	97	873	4,824	5,697

APPENDIX, No. 11—*continued.*

PROVINCE OF CONNAUGHT—*continued.*

COUNTY OF ROSCOMMON.

PERIOD.	Not Agricultural or Pastoral. Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	–	–	–	3	–	–
" " - - - 1883 -	1	–	1	1	–	–
" " - - - 1884 -	1	–	–	–	–	–
" " - - - 1885 -	–	–	–	2	–	–
" " - - - 1886 -	1	1	–	1	–	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	2	–	–	1	–	–
" " - - - 1889 -	3	–	–	–	–	–
" " - - - 1890 -	3	–	2	–	1	1
" " - - - 1891 -	2	–	10	1	–	–
From 22nd August 1891 to 31st March 1893 -	11	–	–	4	–	–
Year ended 31st March - - - 1894 -	4	–	–	–	–	–
TOTAL - - -	28	1	13	13	1	1

COUNTY OF SLIGO.

Year ended 22nd August - - - 1882 -	–	–	1	–	–	–
" " - - - 1883 -	2	1	1	–	–	–
" " - - - 1884 -	1	–	–	3	–	–
" " - - - 1885 -	–	–	–	–	–	–
" " - - - 1886 -	1	–	–	–	–	–
" " - - - 1887 -	2	–	–	–	–	–
" " - - - 1888 -	–	–	–	3	–	–
" " - - - 1889 -	3	–	–	1	–	–
" " - - - 1890 -	2	–	–	–	–	1
" " - - - 1891 -	3	–	7	1	1	–
From 22nd August 1891 to 31st March 1893 -	2	–	–	–	–	–
Year ended 31st March - - - 1894 -	3	–	–	–	–	1
TOTAL - - -	19	1	9	8	1	2

PROVINCE OF MUNSTER.

COUNTY OF CLARE.

Year ended 22nd August - - - 1882 -	1	–	–	4	–	–
" " - - - 1883 -	4	–	2	–	–	–
" " - - - 1884 -	1	4	1	2	–	–
" " - - - 1885 -	–	–	–	3	–	–
" " - - - 1886 -	–	1	–	3	–	–
" " - - - 1887 -	–	–	1	3	–	–
" " - - - 1888 -	–	–	–	–	–	1
" " - - - 1889 -	5	1	–	–	–	–
" " - - - 1890 -	8	–	2	1	1	1
" " - - - 1891 -	5	1	–	3	–	–
From 22nd August 1891 to 31st March 1893 -	2	–	13	–	1	–
Year ended 31st March - - - 1894 -	–	–	–	1	–	–
TOTAL - - -	26	7	19	20	2	2

COUNTY OF CORK.

Year ended 22nd August - - - 1882 -	4	1	3	3	–	3
" " - - - 1883 -	2	–	1	–	–	–
" " - - - 1884 -	1	–	1	–	1	2
" " - - - 1885 -	–	–	1	1	2	–
" " - - - 1886 -	1	1	1	–	–	1
" " - - - 1887 -	–	1	–	–	–	–
" " - - - 1888 -	4	1	2	2	–	–
" " - - - 1889 -	4	4	26	–	–	1
" " - - - 1890 -	19	–	8	4	–	3
" " - - - 1891 -	4	1	9	–	1	2
From 22nd August 1891 to 31st March 1893 -	–	–	1	–	–	–
Year ended 31st March - - - 1894 -	2	1	–	1	–	5
TOTAL - - -	41	10	53	11	4	17

APPENDIX. No. 11—*continued.*

PROVINCE OF CONNAUGHT—*continued.*

COUNTY OF ROSCOMMON.

Not in Occupation. — Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck out, and Withdrawn.
-	-	10	1	4	-	-	18	113	131
-	3	1	3	2	-	9	21	141	162
1	3	2	-	1	1	7	16	141	157
4	1	6	1	2	-	-	16	60	76
-	9	8	-	-	4	-	24	19	43
-	3	-	11	10	8	2	34	58	92
1	1	3	2	-	-	7	17	72	89
4	8	5	102	-	-	8	130	179	309
9	6	18	26	1	23	14	104	254	358
3	3	-	14	-	2	12	47	138	185
11	8	3	13	9	-	5	64	139	203
6	7	1	1	-	7	1	27	60	87
39	52	57	174	29	45	65	518	1,374	1,892

COUNTY OF SLIGO.

-	-	1	-	1	-	9	12	41	53
-	3	1	1	-	2	12	23	268	291
5	-	2	-	2	-	2	15	346	361
4	-	9	1	-	1	1	16	32	48
1	1	-	-	-	1	1	5	23	28
2	-	-	-	1	-	-	5	12	17
5	2	1	5	-	2	1	19	80	99
7	-	2	13	-	3	6	35	100	135
8	2	4	21	-	-	2	40	86	126
3	4	-	3	2	4	1	29	207	236
1	-	2	2	-	1	1	9	36	45
3	2	2	2	1	2	-	16	37	53
39	14	24	48	7	16	36	224	1,268	1,492

PROVINCE OF MUNSTER.

COUNTY OF CLARE.

1	1	-	-	6	3	3	19	42	61
1	2	-	-	18	-	4	31	236	267
1	-	1	-	8	4	5	27	234	261
-	-	1	-	-	6	5	15	27	42
-	2	-	-	2	1	1	10	37	47
-	2	-	-	2	-	3	11	18	29
5	3	-	-	-	-	3	12	34	46
5	2	-	-	-	5	-	18	133	151
2	5	-	1	1	5	2	29	100	129
14	1	1	3	2	3	1	34	134	168
3	-	-	-	-	-	1	20	35	55
2	-	1	-	-	1	-	5	24	29
34	18	4	4	39	28	28	231	1,054	1,285

COUNTY OF CORK.

24	5	-	9	16	2	39	109	223	332
16	-	-	-	17	8	16	60	552	612
11	2	-	3	7	6	14	48	268	316
1	-	3	1	4	-	9	22	88	110
1	1	-	-	2	3	3	14	25	39
1	-	-	-	1	-	2	5	16	21
3	2	6	2	2	3	9	36	273	309
3	4	2	1	4	10	16	75	247	322
4	2	-	1	6	21	8	76	779	855
10	1	1	2	-	5	6	42	340	382
1	1	-	2	-	-	-	5	51	61
14	4	2	1	3	-	3	36	100	136
89	22	14	22	62	58	125	528	2,970	3,498

APPENDIX, No. 11—*continued.*

PROVINCE OF MUNSTER—*continued.*

COUNTY OF KERRY.

PERIOD.	Not Agricultural or Pastoral. — Residential.	Demesne Lands.	Town Parks.	Pasture Holdings.	Holdings held by Hired Labourers or Servants.	Temporary Convenience.
Year ended 22nd August - - - 1882 -	2	–	–	–	–	–
" " - - - 1883 -	2	1	2	–	–	–
" " - - - 1884 -	3	–	5	1	–	1
" " - - - 1885 -	–	–	–	–	–	1
" " - - - 1886 -	–	1	.	1	1	–
" " - - - 1887 -	–	–	–	–	–	–
" " - - - 1888 -	–	2	–	1	–	–
" " - - - 1889 -	4	–	–	2	–	–
" " - - - 1890 -	–	–	–	–	–	1
" " - - - 1891 -	2	–	1	1	–	2
From 22nd August 1891 to 31st March 1893 -	1	–	1	–	–	–
Year ended 31st March - - - 1894 -	1	–	–	1	–	1
TOTAL - - -	15	4	9	7	1	6

COUNTY OF LIMERICK.

Year ended 22nd August - - - 1882 -	3	1	–	5	–	–
" " - - - 1883 -	2	–	–	1	–	–
" " - - - 1884 -	2	–	–	1	–	2
" " - - - 1885 -	–	3	1	–	–	–
" " - - - 1886 -	–	–	–	–	–	–
" " - - - 1887 -	–	–	–	–	1	–
" " - - - 1888 -	3	3	–	–	–	–
" " - - - 1889 -	1		2	5	–	–
" - - - 1890 -	7	–	–	–	1	–
" " - - - 1891 -	6	–	–	4	–	–
From 22nd August 1891 to 31st March 1893 -	–	–	–	–	–	–
Year ended 31st March - - - 1894 -	3	–	–	–	–	3
TOTAL - - -	27	7	3	16	2	5

COUNTY OF TIPPERARY.

Year ended 22nd August - - - 1882 -	3	–	1	–	–	–
" " - - - 1883 -	2	2	–	1	1	–
" " - - - 1884 -	–	–	–	1	–	2
" " - - - 1885 -	2	1	–	–	–	1
" " - - - 1886 -	–	1	–	1	–	–
" " - - - 1887 -	1		–	–	..	–
" " - - - 1888 -	2	1	1	1	–	1
" " - - - 1889 -	4	1	4	–	–	–
" " - - - 1890 -	2	–	7	2	–	2
" " - - - 1891 -	7	3	5	2	–	..
From 22nd August 1891 to 31st March 1893 -	1	–	–	1	–	
Year ended 31st March - - - 1894 -	1	1	1	1	–	–
TOTAL - - -	25	10	19	10	1	6

COUNTY OF WATERFORD.

Year ended 22nd August - - - 1882 -	2	1	–	–	–	–
" " - - - 1883 -	2	–	–	1	–	–
" " - - - 1884 -	1	–	1	–	–	1
" " - - - 1885 -	–	–	–	–	–	–
" " - - - 1886 -	–	–	–	–		1
" " - - - 1887 -	–	–	–	–	–	..
" " - - - 1888 -	1	1	–	–	–	–
" " - - - 1889 -	1	–	2	–		1
" " - - - 1890 -	–	–	–	–	–	–
" " - - - 1891 -	10	–	–	–	–	–
From 22nd August 1891 to 31st March 1893 -	1	–	–	–	–	–
Year ended 31st March - - - 1894 -	2	–	–	–	–	–
TOTAL - - -	20	2	3	1	–	3

APPENDIX, No. 11—*continued.*

PROVINCE OF MUNSTER—*continued.*

COUNTY OF KERRY.

Not in Occupation. Sub-lettings.	Not a present Tenant.	Irregularity of Procedure.	Judicial Rent already fixed.	Lands held under Lease.	Other Causes. *	Grounds of Dismissal not specifically stated.	Total Dismissed.	Struck out and Withdrawn.	TOTAL Dismissed, Struck out, and Withdrawn.
3	5	3	5	3	6	4	31	59	90
22	–	5	–	7	4	27	70	357	427
30	–	8	–	13	32	3	96	510	606
3	–	–	–	–	1	3	8	27	35
–	–	–	–	–	–	4	7	49	56
2	–	–	–	–	1	–	3	8	11
–	1	–	1	–	–	3	8	17	25
11	8	–	7	1	9	1	43	189	232
1	4	–	1	1	–	1	9	32	41
2	2	–	6	–	4	7	27	61	88
–	14	–	2	–	1	2	21	49	70
2	2	–	–	–	1	–	8	47	55
76	36	16	22	25	59	55	331	1,405	1,736

COUNTY OF LIMERICK.

2	5	6	–	4	5	4	35	127	162
–	1	–	2	1	8	7	22	160	182
3	–	–	–	4	4	–	16	60	76
–	–	–	–	1	3	1	9	24	33
–	–	–	–	–	2	1	3	3	6
–	–	–	–	1	3	–	5	2	7
1	1	–	–	–	1	–	9	23	32
3	–	–	–	–	9	–	20	83	103
4	–	–	–	–	5	2	19	107	126
4	1	–	9	1	2	1	28	175	203
–	4	1	1	–	–	–	6	73	79
1	1	–	–	–	1	–	9	28	37
18	13	7	12	12	43	16	181	865	1,046

COUNTY OF TIPPERARY.

–	1	–	3	2	–	3	13	114	127
–	–	–	–	3	4	1	14	355	369
–	–	12	1	2	2	7	27	164	191
3	–	–	–	4	3	2	16	102	118
1	1	–	–	1	–	–	5	26	31
–	–	–	–	–	–	–	1	2	3
8	5	1	1	–	4	9	34	82	116
11	2	–	1	–	1	14	38	75	113
2	5	1	–	3	–	3	27	234	261
3	4	–	2	2	–	6	34	214	248
1	1	1	1	–	–	–	6	90	96
3	1	1	–	–	–	–	9	38	47
32	20	16	9	17	14	45	224	1,496	1,720

COUNTY OF WATERFORD.

–	1	1	–	4	2	–	11	69	80
2	–	–	2	–	–	–	7	184	191
2	–	–	–	1	1	3	10	54	64
–	–	–	–	–	2	3	5	20	25
–	–	–	–	–	–	–	1	7	8
–	–	–	–	–	–	–	–	6	6
2	–	–	2	–	4	4	14	4	18
–	2	–	1	–	4	4	15	85	100
–	2	–	–	–	1	–	3	51	54
1	1	–	2	–	3	–	17	45	62
–	–	–	1	–	–	–	2	32	34
–	–	–	–	–	–	–	2	25	27
7	6	1	8	5	17	14	87	582	669

APPENDIX, No. 12.

PAPER handed in by Mr. *Toler R. Garvey*, 31 July 1894.

THE IRISH LANDOWNERS' CONVENTION.

TABLE of Sales of Tenant's Interests

SUMMARY of Cases collected by the

(1.)—Number of Farms comprised in this Table.
(2.)—Aggregate Rents of the Farms.

COUNTY.	Sales of Non-Judicial Rents. Number of Farms.	Aggregate Rents.	Total Purchase Money.	Average Number of Years' Purchase Paid.	
		£. s. d.	£. s. d.		
Antrim	19	341 18 6	8,095 – –	23·7	1
Armagh	37	384 2 10	7,467 10 –	19·4	2
Cavan	74	958 17 7	12,457 – –	13·0	3
Donegal	133	1,007 8 –	19,163 6 2	19·0	4
Down	76	1,428 14 –	22,080 16 9	15·4	5
Fermanagh	203	2,581 9 6	29,443 17 –	11·4	6
Londonderry	95	794 9 10	16,016 – –	20·1	7
Monaghan	21	194 6 7	2,555 – –	13·1	8
Tyrone	66	833 9 5	15,333 13 1	18·4	9
TOTAL (ULSTER)	724	8,524 16 3	132,612 3 –	15·5	10
Carlow	11	1,013 17 4	4,489 2 –	4·4	11
Dublin	3	207 11 –	1,615 – –	7·8	12
Kildare	3	62 2 –	390 – –	6·3	13
King's County	83	1,180 – 7	6,198 17 –	5·2	14
Kilkenny	43	460 10 8	4,584 – –	9·9	15
Longford	1	– 5 –	65 – –	260·0	16
Louth	20	573 9 –	5,252 10 –	9·1	17
Meath	24	667 16 7	3,837 – –	5·7	18
Queen's County	12	306 3 8	2,314 – –	7·5	19
Westmeath	3	209 13 10	1,100 – –	5·2	20
Wexford	40	920 17 10	7,203 – –	7·8	21
Wicklow	10	348 9 2	1,811 – –	5·2	22
TOTAL (LEINSTER)	253	5,950 16 8	38,859 9 –	6·5	23
Clare	33	427 12 9	6,083 10 –	14·2	24
Cork	59	1,442 6 11	15,428 – –	10·7	25
Kerry	9	283 7 8	2,750 – –	9·7	26
Limerick	94	2,744 4 7	28,308 3 4	10·3	27
Tipperary	47	1,461 11 9	17,927 15 –	12·2	28
Waterford	1	117 9 2	584 5 –	5·0	29
TOTAL (MUNSTER)	243	6,476 12 10	71,081 13 4	10·9	30
Galway	13	239 15 4	1,511 – –	6·3	31
Leitrim	65	758 19 2	8,385 2 10	11·0	32
Mayo	33	317 16 10	2,238 17 8	7·0	33
Roscommon	13	176 18 3	1,495 – –	8 5	34
Sligo	14	142 1 7	1,727 10 –	12·1	35
TOTAL (CONNAUGHT)	138	1,635 11 2	15,357 10 6	9·3	36

SUMMARY TABLE.

ULSTER	724	8,524 16 3	132,612 3 –	15·5	37
LEINSTER	253	5,950 16 8	38,859 9 –	6·5	38
MUNSTER	243	6,476 12 10	71,081 13 4	10·9	39
CONNAUGHT	138	1,635 11 2	15,357 10 6	9·3	40
TOTAL (IRELAND)	1,358	22,587 16 11	257,910 15 10	11·4	41

The Irish Landowners' Convention,
Offices—4, Kildare-street, Dublin, 30th July 1894.

APPENDIX, No. 12.

PAPER handed in by Mr. *Toler R. Garvey*, 31 July 1894.

THE IRISH LANDOWNERS' CONVENTION.

in Ireland, since 1st January 1882.

Irish Landowners' Convention, showing—

(3.)—Total Amount paid for the Tenants' Interest.
(4.)—Average Number of Years' Purchase of the Rent.

	Sales of Judicial Rents.				Totals: Non-Judicial and Judicial Rents together.			
	Number of Farms.	Aggregate Rents.	Total Purchase Money.	Average Number of Years' Purchase Paid.	Number of Farms.	Aggregate Rents.	Total Purchase Money.	Average Number of Years' Purchase Paid
		£. s. d.	£. s. d.			£. s. d.	£. s. d.	
1	90	2,546 – 2	53,130 10 –	20·8	109	2,887 18 8	61,225 10 –	21·2
2	144	2,147 18 8	28,061 1 3	13·0	181	2,532 1 6	35,528 11 3	14·0
3	72	1,383 17 2	14,731 – –	10·6	146	2,339 14 9	27,188 – –	11·6
4	201	1,816 17 2	34,400 5 –	18·9	334	2,824 5 2	53,563 11 2	18·9
5	93	1,236 7 6	18,409 10 –	14·9	169	2,668 1 6	40,490 6 9	15·1
6	58	1,138 10 2	11,045 9 –	9·7	261	3,719 19 8	40,489 6 –	10·8
7	445	5,826 4 5	120,893 5 –	20·7	540	6,620 14 3	136,909 5 –	20·6
8	50	673 4 –	10,884 – 4	16·0	71	867 10 7	13,439 – 4	15·5
9	274	4,027 13 10	69,151 7 6	17·1	340	4,861 3 3	84,485 – 7	17·3
10	1,427	20,796 13 1	360,706 8 1	17·3	2,151	29,321 9 4	493,318 11 1	16·8
11	–	—	—	—	11	1,013 17 4	4,489 2 –	4·4
12	7	1,351 10 –	4,215 – –	3·1	10	1,559 1 –	5,830 – –	3·7
13	1	6 – –	80 – –	13·3	4	68 2 –	470 – –	6·9
14	20	914 9 –	3,955 15 8	4·3	103	2,094 9 7	10,154 12 8	4·8
15	23	483 1 11	5,377 11 6	11·1	66	943 12 7	9,961 11 6	10·5
16	8	169 12 –	1,960 – –	11·6	9	169 17 –	2,025 – –	12·0
17	13	553 6 –	3,570 – –	6·4	33	1,126 15 –	8,822 10 –	7·8
18	27	2,249 18 10	12,851 15 11	5·7	51	2,917 15 5	16,688 15 11	5·7
19	10	247 11 –	2,024 10 –	8·2	22	553 14 8	4,338 10 –	7·8
20	3	85 10 –	950 – –	11·1	6	295 3 10	2,050 – –	6·9
21	16	529 12 –	3,541 – –	6·7	56	1,450 9 10	10,744 – –	7·4
22	18	1,102 10 –	6,072 – –	5·5	28	1,450 19 2	7,883 – –	5·4
23	146	7,693 – 9	44,597 13 1	5·8	399	13,643 17 5	83,457 2 1	6·1
24	10	518 17 6	2,901 – –	5·6	43	946 10 3	8,984 10 –	9·5
25	71	1,732 10 7	18,636 – –	10·7	130	3,174 17 6	34,064 – –	10·7
26	16	757 5 2	5,695 – –	7·5	25	1,040 12 10	8,445 – –	8·1
27	62	2,279 17 8	21,255 10 –	9·3	156	5,024 2 3	49,563 13 4	9·8
28	35	1,069 19 9	12,135 15 –	11·2	82	2,531 11 6	30,063 10 –	11·8
29	8	460 15 –	1,939 7 –	4·2	9	578 4 2	2,523 12 –	4·3
30	202	6,819 5 8	62,562 12 –	9·1	445	13,295 18 6	133,644 5 4	10·0
31	29	343 18 9	3,276 10 –	9·5	42	583 14 1	4,787 10 –	8·2
32	102	1,471 7 7	18,769 10 –	12·7	167	2,230 6 9	27,154 12 10	12·1
33	42	352 19 5	2,816 17 4	8·0	75	670 16 3	5,055 15 –	7·5
34	29	690 3 10	5,691 – –	8·2	42	867 2 1	7,186 – –	8·2
35	29	463 8 9	4,648 13 –	10·0	43	605 10 4	6,376 3 –	10·5
36	231	3,321 18 4	35,202 10 4	10·6	369	4,957 9 6	50,560 – 10	10·2

SUMMARY TABLE.

37	1,427	20,796 13 1	360,706 8 1	17·3	2,151	29,321 9 4	493,318 11 1	16·8
38	146	7,693 – 9	44,597 13 1	5·8	399	13,643 17 5	83,457 2 1	6·1
39	202	6,819 5 8	62,562 12 –	9·1	445	13,295 18 6	133,644 5 4	10·0
40	231	3,321 18 4	35,202 10 4	10·6	369	4,957 9 6	50,560 – 10	10·2
41	2,006	38,630 17 10	503,069 3 6	13·0	3,364	61,218 14 9	760,979 19 4	12·4

G. de L. Willis,
Secretary.

APPENDIX, No. 13.

PAPER handed in by Mr. *William Rochfort*, 31 July 1894.

THE IRISH LANDOWNERS' CONVENTION.

SALES of TENANTS'

No.	Townland.	Name of Tenant (Vendor).	Area.		Griffith's Valuation.	Rent.		
			Statute Measure.	Irish Plantation Measure.		Old Rent.	Judicial Rent.	
1.	2.	3.	4.	5.	6.	7.	8.	
			A. R. P.	A. R. P.	£. s. d.	£. s. d.	£. s. d.	
1	Raheenroe	Denis M'Grath	29 3 33	18 2 38	18 5 –	31 1 3	25 8 9	1
2	Leugh	William Barry	35 1 28	21 3 18	12 10 –	13 – –	10 – –	2
3	Clonmore, South	Denis Neill	27 0 35	16 3 22	11 9 –	14 14 6	7 10 –	3
4	Rehill and Park-adarren.	Michael J. Tobin	73 2 20	45 2 12	62 5 –	68 10 –	45 – –	4
5	Kilroe	Johanna Power	12 1 5	7 2 12	8 15 –	9 16 –	9 – –	5
6	Knockanecanboy	Margaret M'Grath	41 3 0	25 3 1	26 – –	34 16 –	30 – –	6
7	Poulavalla	James Clifford	21 0 8	13 0 5	15 15 –	18 – –	14 10 –	7
8	Garrymore	John O'Brien	18 3 32	11 0 2	16 – –	24 – –	19 – –	8
9	Clogheenafishogue	Michael J. Tobin	63 3 22	39 0 1	24 5 –	42 3 6	37 19 6	9
10	Rehill	J. J. Shee	91 2 6	56 0 2	74 – –	88 – –	68 – –	10
11	Galbertstown	Catherine Cahill	16 0 14	9 3 29	24 14 –	36 14 6	9 6 –	11
12	- ditto	Catherine Cahill	35 3 16	22 0 21			20 14 –	12
13	- ditto	John Shanahan (Michael).	9 3 12	6 0 10	6 – –	7 12 3	6 7 –	13
14	Kylebally Galvan	Owen Feehan	37 1 22	—	17 5 –	22 16 –	18 5 – New rent, non-judicial.	14
15	Shronebeha	John Fahy	20 1 14	12 2 7	9 15 –	12 2 7	10 – –	15
16	- ditto	James Sheehan	32 1 3	19 3 25	13 10 –	14 2 4	10 10 –	16
17	Knockroe	Thomas Mockler	185 3 7	114 2 34	111 5 –	145 – –	126 – –	17
18	Boscabell	Gabriel Watkins	28 2 15	17 2 25	14 – –	20 19 3	17 10 –	18
19	Knockgraffon	Josephine Butler Lowe.	117 0 28	72 1 13	73 5 –	72 – –	80 – –	19
20	Knockeevan	Benjamin Burland	19 2 12	12 0 13	13 5 –	18 12 –	18 12 –	20

30 July 1894.

APPENDIX, No. 13.

PAPER handed in by Mr. *William Rochfort*, 31 July 1894.

THE IRISH LANDOWNERS' CONVENTION.

INTERESTS since 1st JANUARY 1882.

	If Judicial Rent, insert Date when Fixed. 9.	Date of Sale of the Tenancy. 10.	Amount obtained for the Tenancy. 11. £. s. d.	Number of Years' Purchase of the Rent. 12.	OBSERVATIONS. *Inter alia*, information would be useful as to Quality and Condition of Land and Buildings at Date of Sale, and whether improved or deteriorated by the Outgoing Tenant. 13.
1	29 October 1882	14 October 1892	295 – –	Nearly twelve years' purchase.	County Tipperary. Landlord, Viscount Lismore.
2	28 March 1892	28 March 1892	300 – –	30	- - ditto - - ditto.
3	27 September 1887	23 October 1893	140 – –	$18\frac{2}{3}$	County Tipperary. Lady Margaret Charteris.
4	27 September 1887	12 December 1892	500 – –	$11\frac{1}{9}$	- - ditto - - ditto.
5	17 April 1883	5 December 1884	110 – –	$12\frac{2}{9}$	- - ditto - - ditto.
6	13 March 1882	8 March 1884	265 – –	$8\frac{5}{6}$	- - ditto - - ditto.
7	29 September 1881	24 September 1884	250 – –	$17\frac{7}{29}$	- - ditto - - ditto.
8	24 March 1884	14 April 1890	200 – –	$10\frac{10}{19}$	- - ditto - - ditto.
9	20 March 1882	12 December 1892	400 – –	$10\frac{10}{19}$	County Tipperary. Landlord's name, R. Murdoch, esq.
10	– September 1887	16 February 1894	550 – –	$8\frac{3}{74}$	
11	29 February 1884	16 February 1892	142 10 –	$15\frac{1}{3}$	County Tipperary. Landlord, James F. Daly, esq.
12	- - ditto	21 March 1892	305 5 –	$14\frac{3}{4}$	- - ditto - - ditto.
13	5 December 1883	– May 1893	200 – –	$31\frac{1}{2}$	- - ditto - - ditto.
14	– December 1888	4 Feb. 1892	250 – –	$13\frac{3}{7}$	County of Tipperary. Landlord, Goings, minors (in Chancery).
15	18 May 1883	2 October 1893	220 – –	22	County of Cork. Landlord, Viscount Lismore.
16	- - ditto	4 February 1894	160 – –	$15\frac{1}{4}$	- - ditto - - ditto.
17	16 May 1891	28 December 1891	1,100 – –	$8\frac{3}{4}$	County Tipperary. Landlord, Solomon Watson, esq.
18	4 May 1888	30 August 1889	200 – –	$11\frac{1}{2}$	- - ditto - - ditto.
19	25 February 1885	28 July 1892	285 – –	$3\frac{1}{2}$	County of Tipperary. Landlord's name, Lady Emily Hankey.
20	25 March 1882	1 May 1884	120 – –	$6\frac{1}{2}$	- - ditto - - ditto.

William Rochfort, Land Agent,
Cahir, County Tipperary.

APPENDIX, No. 14.

PAPER handed in by Mr. Justice *Bewley*, July 1894.

LIST of APPEALS and CASES STATED from Decisions of the LAND COMMISSION to which Mr. Justice *Bewley* was a party between the 1st January 1891 and the 31st May 1894.

No.	Landlord.	Tenant.	Subject.	Appellant.	Date of Order of Court of Appeal.	Result.	Observations.
1	Batt	Moore	Demesne land	Landlord	8 June 1891	Reversed	Reported in C. A., 32 L. R. (Ir.), 285.
2	Essex	Kennedy	Sub-letting without consent, trivial sub-letting	Tenant	2 Nov. „	Affirmed	Reported in C. A., 28 L. R. (Ir.), 586.
3	Fingall	Barnwall	Not in *bonâ fide* occupation	ditto	3 Nov. „	ditto.	—
4	Finch	Moylan	Letting by tenant for life for his own life	Landlord	3 Nov. „	Reversed	Reported in Land Com., 28 L. R. (Ir.), 332; in C.A., *ibid.* 595.
5	Massy	Woodside	Rent fixed by arbitrators not binding	ditto	5 Nov. „	Affirmed	Reported in C. A., 28 L. R. (Ir.), 604.
6	Mahon	Maguire	Town park	Tenant	18 Nov. „	ditto.	—
7	Allen	Douglas	Pasture	Landlord	4 Dec. „	Reversed	Reported in C. A., 26 Ir. L. T. R., 41.
8	Sproule	Ramsay	Reversionary lease, Section 21 of Act of 1881	Tenant	7 Dec. „	Affirmed	Reported in C. A., 26 Ir. L. T. R., 4.
9	Beecher	Deane	Residential holding	Landlord	7 Dec. „	ditto	—
10	Jackson	Hagan	Present tenancy not destroyed by consolidation of holdings.	ditto	8 Dec. „	ditto	Reported in L. C., 28 L. R. (Ir.), 326.
11	Townsend	White	Demesne land	ditto	28 Jan. 1892	Reversed	Additional evidence for landlord given in Court of Appeal.
12	White	Johnston	ditto	Tenant	15 Jan. „	Affirmed.	—
13	Land Purchase Company	M'Donagh	Pasture	ditto	15 Jan. „	ditto.	—
14	Segrave	Nicholls	ditto	ditto	4 Feb. „	ditto.	—
15	Wakefield	Robinson	Sub-letting without consent, trivial sub-letting	Landlord	26 Feb. „	Reversed	Reported in C. A., 30 L. R. (Ir.), 547.
16	Burges	M'Craith	Demesne land	Tenant	3 May „	Affirmed	Reported in C. A., 26 Ir. L. T. R., 113.
17	Rice	Roche	ditto	ditto	4 May „	ditto	Reported in C. A., 26 Ir. L. T. R., 117.
18	Merritt	Fitzgerald	Home farm	Landlord	5 May „	ditto	Reported in C. A., 26 Ir. L. T. R., 118.
19	Roden	Dickie	Residential holding, demesne	ditto	12 May „	ditto.	—
20	Carew	Flynn	Residential holding	ditto	12 May „	ditto.	—
21	Pooler	Lepper	ditto	Tenant	10 June „	ditto	Reported in C. A., 26 Ir. L. T. R., 121.
22	Finch	Looby	Letting by tenant for life in excess of leasing power	ditto	24 June „	Reversed	Reported in C. A., 30 L. R. (Ir.), 568.
23	De Vesci	Waldron	Residential holding	Landlord	21 June „	Affirmed	—
24	Moore	Smyth	Section 1 of Act of 1887	ditto	23 June „	Reversed	Reported in C. A., 32 L. R. (Ir.), 129.
25	Annesley	Wherry	Non-agricultural holding	Tenant	29 June „	ditto.	—
26	Mulholland	M'Clean	Town park	Landlord	1 July „	ditto.	—
27	Foster	Boyle	Mill holding	ditto	12 July „	ditto	Reported in C. A., 30 L. R. (Ir.), 623.
28	Crofton	Flanagan	Pasture	Tenant	27 Oct. „	Affirmed	Reported in C. A., 26 Ir. L. T. R., 128.
29	Wright	Daly	Town park	ditto	31 Oct. „	ditto	Reported in C. A., 32 L. R. (Ir.), 9.
30	Baker	M'Causland	Residential holding	Landlord	4 Nov. „	ditto.	—
31	Law	Crookshank	Non-agricultural holding	ditto	4 Nov. „	Reversed	Reported in C. A., 27 Ir. L. T. R., 2.
32	Macnamara	Macnamara	Town park	ditto	14 Nov. „	ditto	Reported in C. A., 32 L. R. (Ir.), 1.
33	Townsend	Keohane	Residential holding, demesne	ditto	24 Nov. „	Affirmed.	—
34	Spencer	Tedcastle	Demesne land	ditto	25 Nov. „	Reversed	Reported in L. C., 26 Ir. L. T. & S. J., p. 420; in C. A., 32 L. R. (Ir.), 411.
35	Tyrrell	Connolly	Right of resumption	ditto	28 Nov. „	Affirmed	Reported in C. A., 32 L. R. (Ir.), 97.
36	Gradwell	M'Cullagh	Pasture	Tenant	19 Dec. „	ditto.	—
37	Tighe	Clements	Buildings not exempted from rent by reason of covenant	ditto	17 Jan. 1893	ditto	Reported in L. C. 26 Ir. L. T., 100; in C. A. (1894), 2 Ir. R., 101.

38	Rossmore	Thompson	Sub-letting without consent	Landlord	20 Feb. „	Reversed	Reported in C. A., 32 Ir. L. R., 431.
39	Ryan	Hunt	Residential holding	- ditto	20 Feb. „	Affirmed.	—
40	Wallace	M'Cabe	Town park	Tenant	6 Feb. „	- ditto.	—
41	Cramsie	Stott	Residential holding	Landlord	9 Feb. „	Reversed	Reported in C. A., 27 Ir. L. T. R., 57.
42	Edie	Smyth and Donaghy	Sub-letting without consent	Tenant	11 May „	Affirmed	Reported in C. A., 27 Ir. L. T. R., 88.
43	Smyth and Dames	Douglas	Non-agricultural holding	- ditto	9 Feb. „	- ditto.	—
44	French	Taaffe	Pasture	- ditto	1 March „	- ditto	Reported 27 Ir. L. T. R., 56.
45	Erne	Fawcett	- ditto	- ditto	24 April „	- ditto.	—
46	Tench	Flanagan	Town park	- ditto	26 April „	- ditto.	—
47	Newton	Aughney	Pasture, dairy farm	Landlord	27 April „	Reversed.	—
48	Henry	Keays	Pasture	Tenant	28 April „	Affirmed	Note of Decision of C. A., in 27 Ir. L. T. & S. J., p. 220.
49	Eyre	Wall	Part of holding non-agricultural	- ditto	28 April „	- ditto	Reported in C. A., 32 L. R. (Ir.), 475.
50	Rattey	Kelly	No relation of landlord and tenant	- ditto	17 May „	- ditto	Reported in C. A., 32 L. R. (Ir.), 445.
51	Biggs	Bryan	Sub-letting without consent	Landlord	3 May „	- ditto.	—
52	Listowel	Hewson	Demesne land	Tenant	16 May „	Reversed	Reported in C. A., 32 L. R. (Ir.), 700.
53	Cloncurry	Finnerty	Letting for temporary convenience	- ditto	8 May „	Affirmed	Note of Decision of C. A., in 27 Ir. L. T. & S. J., p. 230.
54	Joynt	Mulcaire	Sub-letting without consent	- ditto	17 May „	Reversed	Reported in C. A., 32 L. R. (Ir.), 683.
55	Wallace	Boggs	Residential holding	- ditto	20 June „	Affirmed	Note of Decision of C. A., in 27 Ir. L. T. & S. J., p. 351.
56	Redington's estate	—	Land purchase appeal, rule against perpetuities	Claimant of reversionary lease.	28 July „	- ditto	Reported in L. C., 32 L. R. (Ir.), 347.
57—63	Stewart	Davidson	Town parks	Tenant	4 July „	Five cases affirmed, two reversed.	—
64	West	Huggard	Present tenancy	Landlord	30 June „	Affirmed	Reported in L. C. 27 Ir. L. T. R., 60; in C. A. (1894), 2 Ir. R. 108.
65	Barker	Molloy	Pasture	Tenant	11 July „	- ditto	Note of Decision of C. A., in 27 Ir. L. T. & S. J., p. 340.
66	White	White	Trivial sub-letting	- ditto	23 Feb. 1894	Reversed	Reported in C. A., 28 Ir. L. T. R., 87.
67	Macnaghten	Taggart	Town park	Landlord	14 Dec. 1893	Affirmed.	—
68	Hamilton	Taylor	Residential holding	Tenant	15 Dec. „	- ditto.	—
69	Domvile	Byrne	- - ditto	- ditto	18 Dec. „	- ditto.	—
70	Rorke and another	Murphy	Section 15 of Act of 1881	- ditto	18 Dec. „	Reversed	Decided by Court of Appeal on a point not raised before Land Commission.
71	Harrington	Murphy	Town park	- ditto	18 Dec. „	Affirmed.	—
72	Loftus	M'Cormick	Pasture	- ditto	19 Dec. „	- ditto	Reported in C. A., 28 Ir. L. T. R., 37.
73	Drogheda	Conroy	Present tenancy	Landlord	22 Feb. 1894	- ditto	Reported in C. A., 28 Ir. L. T. R., 59.
74	Caledon	Archer	Town park	- ditto	20 Dec. 1893	Reversed	Reported in C. A., 28 Ir. L. T. R., 4.
75	Eyre	Mulhall	Part of holding non-agricultural	- ditto	21 Dec. „	Affirmed.	—
76	Eyre	Grace	Sub-letting without consent	- ditto	21 Dec. „	Reversed.	—
77	Conyngham	Boyle	Ulster custom; sale in violation of custom	Tenant	31 Jan. 1894	Affirmed	Reported in L. C.; 27 Ir. L. T. R., 110.
78	Goodbody	Perry & Co.	Town park	Landlord	26 Feb. „	- ditto.	—
79	Caruth	M'Mahon	- ditto	- ditto	19 Feb. „	Reversed.	—
80	Marquis of Bath's estate	—	Land purchase appeal, redemption of tithe rent-charge	- ditto	23 Feb. „	Affirmed	Reported in L. C., 27 Ir. L. T. R., 112.
81	Gormanston	Pratt	Demesne lands	Tenant	23 April „	- ditto	Reported in L. C. (1894), 2 Ir. R., 279; in C. A., 28 Ir. L. T. R., 69.
82	Annesley	Martin	Town park	Landlord	20 April „	- ditto.	—
83	Trustee of Corballis	Ward	Trivial sub-letting	Tenant	26 April „	Reversed	Reported in C. A., 28 Ir. L. T. R., 101.
84	Parkes	Murdock	Mill holding	- ditto	26 April „	Affirmed.	—
85	Abercorn	Watson	Demesne land	Landlord	2 May „	Reversed.	—
86	Farley	Perry	Non-agricultural holding	- ditto	4 May „	- ditto.	—
87	O'Kelly	Kelly	Compensation for improvements, unreasonable conduct	- ditto	1 May „	Affirmed.	—

Note.—In addition to the above, appeals were taken from decisions of the Land Commission during the same period in 17 cases, but were subsequently withdrawn or settled.

30th June 1894.

E. T. Bewley.

APPENDIX, No. 15.

PAPER handed in by Mr. Justice *Bewley*, August 1894.

RETURN of Appeals by Counties, Provinces, and all Ireland, under the Land Law (Ireland)

SUB-COMMISSION.	LANDLORDS' APPEALS.								
	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.				
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.	
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.	
Antrim	116	5,013 14 1	3,506 10 2	3,829 18 4	5	140 6 8	130 7 8	102 13 6	1
Armagh	128	3,783 13 2	2,692 12 6	2,936 18 9	6	136 10 5	107 10 –	89 10 –	2
Cavan	118	3,350 18 5	2,462 4 –	2,689 3 2	3	104 16 –	76 15 –	71 5 –	3
Donegal	203	2,674 19 2	1,930 9 6	2,164 19 11	13	52 19 9	41 19 –	38 2 –	4
Down	141	4,981 – 9	3,488 16 –	3,815 11 5	2	143 7 –	110 10 –	76 15 –	5
Fermanagh	59	1,555 3 –	1,155 9 6	1,261 11 4	2	119 10 –	95 – –	88 – –	6
Londonderry	45	1,273 10 3	899 1 –	988 17 –	11	170 4 1	210 17 –	122 19 –	7
Monaghan	156	4,231 18 6	2,999 17 3	3,270 9 1	3	57 17 3	38 11 –	25 – –	8
Tyrone	151	3,892 19 3	2,770 5 –	3,043 2 7	11	294 17 2	265 5 –	237 14 –	9
TOTAL OF ULSTER	1,117	30,757 16 7	21,905 4 11	24,050 11 7	56	1,220 8 4	1,076 14 8	851 18 6	10
Carlow	78	4,937 7 2	3,502 14 6	3,848 3 –	–	—	—	—	11
Dublin	29	3,679 5 2	2,738 6 6	2,953 10 10	1	220 – –	176 – –	170 15 –	12
Kildare	35	2,263 10 9	1,674 1 –	1,840 7 10	–	—	—	—	13
Kilkenny	105	5,612 13 1	3,619 15 3	4,005 18 8	3	171 – –	128 – –	116 – –	14
King's	90	3,956 13 5	3,443 18 7	3,295 1 6	1	30 – –	14 – –	12 16 –	15
Longford	70	2,856 15 7	1,962 3 7	2,237 16 10	6	234 – –	194 5 –	178 10 –	16
Louth	67	2,858 7 8	1,920 18 –	2,180 3 –	3	24 10 6	17 10 –	15 7 6	17
Meath	71	8,249 3 9	6,321 5 –	6,892 4 9	1	275 – –	150 – –	140 – –	18
Queen's	90	4,672 16 5	3,160 3 –	3,563 9 2	2	216 6 2	173 – –	152 – –	19
Westmeath	42	4,026 11 6	3,192 4 4	3,433 15 6	2	36 – –	32 15 –	32 5 –	20
Wexford	118	6,390 2 6	4,447 18 6	4,882 – 6	1	29 5 –	24 10 –	20 – –	21
Wicklow	69	4,055 8 2	3,002 – 10	3,304 13 –	1	11 – –	8 – –	3 3 8	22
TOTAL OF LEINSTER	864	53,558 15 2	38,985 9 1	42,437 4 7	21	1,247 1 8	918 – –	840 17 2	23
Clare	124	3,779 13 9	2,532 18 –	2,806 5 4	4	182 7 –	144 5 –	132 – –	24
Cork	132	5,998 16 9	4,266 19 10	4,741 6 6	5	248 10 –	156 – –	142 10 –	25
Kerry	69	2,612 14 6	1,788 3 –	1,957 1 8	4	184 9 –	147 13 –	132 10 –	26
Limerick	98	5,823 1 11	4,036 10 –	4,409 18 3	4	179 5 5	122 10 –	115 14 6	27
Tipperary	78	5,178 7 2	3,663 14 6	4,000 9 8	2	372 12 4	271 – –	256 – –	28
Waterford	32	2,923 8 8	2,032 10 –	2,202 5 –	2	103 16 10	94 – –	83 10 –	29
TOTAL OF MUNSTER	533	26,316 2 9	18,320 15 4	20,117 6 5	21	1,271 – 7	935 8 –	862 4 6	30
Galway	136	3,398 8 7	2,355 17 6	2,652 5 4	4	49 14 6	33 10 –	25 10 –	31
Leitrim	48	862 11 –	599 5 –	666 – 10	2	50 – –	34 – –	30 10 –	32
Mayo	73	1,297 17 4	954 18 9	1,092 2 5	9	113 17 –	87 16 –	77 12 –	33
Roscommon	127	4,042 10 8	2,863 3 –	3,180 12 10	4	98 10 –	64 – –	59 10 –	34
Sligo	121	2,271 12 10	1,573 10 3	1,771 18 6	–	—	—	—	35
TOTAL OF CONNAUGHT	505	11,873 – 5	8,346 14 6	9,362 19 11	19	312 1 6	219 6 –	193 2 –	36
TOTAL OF IRELAND	3,019	122,505 14 11	87,558 3 10	95,968 2 6	117	4,050 12 1	3,149 8 8	2,748 2 2	37

APPENDIX, No. 15.

PAPER handed in by Mr. Justice *Bewley*, August 1894.

Act, 1881, from the commencement of Proceedings on 22nd August 1881 up to 31st March 1894.

TENANTS' APPEALS.

	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.			
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.
1	2	110 - -	90 - -	93 5 -	74	2,537 10 8	2,250 17 2	1,995 14 8
2	-	—	—	—	31	851 3 11	790 16 7	706 8 -
3	1	15 14 -	11 - -	12 - -	22	981 7 11	869 5 4	804 - -
4	12	7 10 -	12 2 -	13 10 -	60	1,576 18 11	1,464 16 6	1,326 12 10
5	2	42 12 -	35 7 -	36 5 -	67	2,079 13 -	1,861 15 10	1,686 11 7
6	1	33 - -	31 - -	33 - -	37	1,238 12 -	1,138 7 2	1,019 11 11
7	1	60 13 -	68 13 -	76 10 -	51	1,481 12 8	1,440 18 6	1,271 18 6
8	-	—	—	—	37	627 12 4	547 16 8	477 8 -
9	-	—	—	—	77	1,792 17 1	1,628 3 1	1,455 7 11
10	19	269 9 -	248 2 -	264 10 -	456	13,167 8 6	11,992 16 10	10,743 13 5
11	-	—	—	—	21	1,531 7 2	1,294 2 -	1,192 18 6
12	-	—	—	—	22	4,095 7 2	3,402 8 4	3,191 5 -
13	-	—	—	—	22	1,837 - 8	1,577 12 8	1,479 10 -
14	-	—	—	—	31	1,556 8 11	1,309 15 -	1,187 - -
15	-	—	—	—	11	1,078 4 2	881 12 6	820 17 -
16	1	24 1 6	19 - -	19 10 -	17	648 5 -	549 3 6	490 10 -
17	-	—	—	—	15	1,981 8 9	1,703 8 10	1,606 5 3
18	-	—	—	—	19	1,667 4 7	1,515 - -	1,398 - -
19	1	39 - -	28 - -	29 - -	33	1,243 13 5	1,126 - 9	964 19 6
20	-	—	—	—	28	2,248 9 5	1,922 14 1	1,847 7 10
21	-	—	—	—	26	1,427 3 3	1,310 17 11	1,200 6 4
22	5	22 5 10	18 - 6	22 12 2	21	1,213 - 9	1,133 - 2	1,000 8 6
23	7	85 7 4	65 - 6	71 2 2	266	20,527 13 3	17,725 15 9	16,379 7 11
24	2	375 - -	302 - -	320 - -	164	5,622 18 7	4,930 2 2	4,389 15 6
25	3	313 10 -	233 - -	239 15 -	486	28,228 1 10	23,794 9 4	21,436 15 8
26	1	22 16 -	19 - -	22 10 -	81	4,347 10 3	3,615 19 6	3,278 7 3
27	1	76 7 3	58 10 -	60 - -	169	11,401 9 -	9,478 18 11	8,592 14 -
28	-	—	—	—	85	6,375 1 9	5,324 1 9	4,766 16 -
29	-	—	—	—	50	3,703 19 11	3,106 17 8	2,844 15 6
30	7	787 13 3	612 10 -	642 5 -	1,035	59,679 1 4	50,250 9 4	45,289 3 11
31	1	25 1 -	23 1 -	30 - -	62	2,532 1 5	2,094 14 10	1,878 3 6
32	1	18 15 -	12 10 -	14 10 -	27	717 10 1	643 7 -	559 4 6
33	-	—	—	—	32	632 10 7	580 14 9	524 4 6
34	-	—	—	—	44	1,173 5 1	999 3 -	909 14 -
35	1	6 15 -	5 10 -	6 5 -	24	582 10 11	533 2 6	477 10 -
36	3	50 11 -	41 1 -	50 15 -	189	5,637 18 1	4,851 2 1	4,348 16 6
37	36	1,193 - 7	966 13 6	1,028 12 2	1,946	99,012 1 2	84,820 4 -	76,761 1 9

RETURN of Appeals by Counties, Provinces, and all Ireland, under the Land Law (Ireland) Act, 1881,

SUB-COMMISSION.	CROSS APPEALS.								
	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.				
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.	
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.	
Antrim	29	1,846 13 9	1,338 13 –	1,459 10 6	29	1,233 9 6	983 17 –	902 18 8	1
Armagh	11	443 17 3	317 15 –	360 10 8	14	459 7 2	339 7 –	311 5 –	2
Cavan	5	260 5 3	218 10 –	240 – –	6	299 4 8	259 15 –	241 10 –	3
Donegal	7	398 8 1	250 10 –	270 10 –	10	449 16 7	343 4 –	313 17 6	4
Down	24	1,380 19 3	959 19 4	1,056 18 –	20	876 3 9	700 10 –	636 4 9	5
Fermanagh	14	660 10 2	471 14 4	515 19 8	16	449 4 2	414 4 3	361 6 –	6
Londonderry	32	1,226 17 8	905 12 7	979 5 –	50	1,914 8 2	1,580 12 9	1,461 5 –	7
Monaghan	9	412 17 6	334 5 –	377 12 –	5	247 7 8	197 – –	179 – –	8
Tyrone	16	620 10 5	462 2 –	518 7 11	16	533 3 10	431 12 6	388 8 –	9
TOTAL OF ULSTER	147	7,250 19 4	5,259 1 3	5,778 13 9	166	6,462 5 6	5,250 2 6	4,795 14 11	10
Carlow	14	2,304 13 7	1,725 8 –	1,848 10 –	6	1,022 1 4	852 10 –	822 – –	11
Dublin	10	1,738 9 4	1,345 – –	1,457 15 –	3	773 13 –	604 – –	567 10 –	12
Kildare	6	465 13 8	275 5 –	290 – –	5	1,312 16 8	996 10 –	960 10 –	13
Kilkenny	16	1,017 6 –	735 3 –	789 10 –	12	1,079 11 9	864 15 –	808 6 6	14
King's	8	729 5 4	507 13 –	546 10 –	1	127 16 –	96 15 –	93 15 –	15
Longford	8	219 14 2	144 19 –	161 8 –	24	1,035 12 8	892 16 8	798 16 –	16
Louth	5	489 10 8	336 15 –	361 10 –	1	180 – –	112 – –	109 – –	17
Meath	17	3,354 3 –	2,893 – –	3,073 4 2	5	1,329 4 2	1,127 10 –	1,076 – –	18
Queen's	35	2,336 11 6	1,525 – –	1,661 12 –	21	2,029 17 5	1,721 10 –	1,492 – –	19
Westmeath	7	1,195 4 2	996 7 –	1,061 10 –	4	339 12 9	325 10 –	297 – –	20
Wexford	8	732 12 4	549 5 –	589 15 –	6	347 17 10	284 9 –	247 – –	21
Wicklow	21	484 12 11	393 5 –	455 12 4	4	788 9 4	573 5 –	531 –	22
TOTAL OF LEINSTER	155	15,067 16 8	11,427 – –	12,296 16 6	92	10,366 12 11	8,451 10 8	7,802 17 6	23
Clare	31	2,323 10 6	1,634 – –	1,776 8 –	49	2,725 4 10	2,156 14 –	1,976 10 –	24
Cork	63	4,867 17 1	3,623 6 –	3,919 16 8	59	4,297 5 5	3,399 7 6	3,118 8 –	25
Kerry	25	1,731 18 2	1,360 11 8	1,399 1 8	40	2,911 1 8	2,149 5 –	1,931 10 –	26
Limerick	37	3,387 13 2	2,449 3 6	2,636 5 –	48	4,843 17 10	3,681 19 –	3,426 9 –	27
Tipperary	5	340 7 4	231 5 –	272 – –	16	2,252 2 5	1,741 10 –	1,556 8 –	28
Waterford	15	1,756 12 5	1,254 10 –	1,359 12 –	9	1,109 10 6	1,027 8 –	918 17 –	29
TOTAL OF MUNSTER	176	14,407 18 8	10,552 16 2	11,363 3 4	221	18,139 2 8	14,156 3 6	12,928 2 –	30
Galway	12	529 15 8	319 9 4	429 5 6	15	892 18 5	656 7 5	612 5 –	31
Leitrim	2	77 8 –	62 – –	69 – –	20	536 1 3	436 10 –	388 15 –	32
Mayo	1	37 – –	30 10 –	32 10 –	1	10 7 –	7 15 –	7 7 –	33
Roscommon	6	523 16 9	395 – –	401 – –	5	318 9 3	242 15 –	228 – –	34
Sligo	4	241 10 –	196 10 –	201 10 –	5	264 17 11	190 12 6	181 10 –	35
TOTAL OF CONNAUGHT	25	1,409 10 5	1,003 9 4	1,133 5 6	46	2,022 13 10	1,533 19 11	1,417 17 –	36
TOTAL OF IRELAND	503	38,136 5 1	28,242 6 9	30,571 19 1	525	36,990 14 11	29,391 16 7	26,944 11 5	37

from the commencement of Proceedings on 22nd August 1881, up to 31st March 1894—*continued.*

APPEALS WHICH WERE WITHDRAWN, STRUCK OUT, DISMISSED, WHEN ORDER BELOW WAS CONFIRMED, &c.

	Cases in which the Judicial Rent fixed by Court below was confirmed by Appeals being Withdrawn, Struck Out, or when Judicial Rent was confirmed by Order.			Cases in which no Judicial Rent was fixed: (*a*) When Applications were Dismissed by Court below, and Dismiss affirmed on Appeal; (*b*) Where Judicial Rent was fixed by Court below, and Originating Notice Dismissed on Appeal.			Cases where the Court below Dismissed the Originating Notices, and on Appeal the Cases were remitted to fix a Rent.	
	Number.	Former Rent.	Judicial Rent.	Number.	Former Rent.	Judicial Rent.	Number.	Former Rent.
		£. s. d.	£. s. d.		£. s. d.	£. s. d.		£. s. d.
1	1,472	41,129 19 4	31,382 13 5	118	3,653 9 6	1,210 2 10	6	280 14 6
2	1,624	32,575 13 11	24,556 14 6	77	2,133 12 5	648 2 6	2	44 18 4
3	547	11,195 11 9	8,622 9 7	32	996 13 6	259 11 1	1	13 10 –
4	1,869	22,988 5 8	17,887 10 4	58	852 4 6	221 16 6	–	—
5	1,039	33,032 10 3	25,618 16 –	76	1,746 7 7	416 12 –	6	485 5 4
6	750	14,974 5 8	11,617 18 3	33	708 6 5	165 3 –	2	41 10 –
7	839	20,612 17 1	15,827 5 5	48	1,478 3 3	472 7 –	2	17 16 8
8	1,273	23,103 7 5	17,114 4 11	25	785 7 6	329 15 4	1	25 16 8
9	1,787	30,167 7 2	23,114 4 3	106	2,027 – 3	549 4 –	4	124 4 –
10	11,200	229,779 18 3	175,741 16 8	573	14,381 4 11	4,272 14 3	24	1,033 15 6
11	268	15,072 18 11	11,205 8 2	18	975 5 2	299 10 –	1	20 5 3
12	199	20,443 15 4	15,899 3 11	39	2,889 1 11	965 5 –	–	—
13	214	17,858 1 2	13,457 10 4	12	2,384 17 7	1,117 – –	6	939 3 7
14	591	25,338 17 8	19,100 6 1	32	2,266 14 –	713 17 –	1	31 15 5
15	284	13,296 3 6	10,803 8 –	20	1,170 1 4	459 – –	–	—
16	644	18,714 8 10	12,694 12 9	20	1,750 15 10	1,252 19 –	1	24 – –
17	285	14,392 11 2	10,953 – 4	12	897 10 3	228 10 –	3	595 – –
18	426	37,619 8 2	30,337 9 2	29	4,173 17 5	1,197 – –	7	821 3 3
19	484	18,690 3 11	14,215 16 2	41	4,064 17 7	1,206 5 –	3	215 2 7
20	365	17,286 11 7	13,579 6 4	17	2,368 – 7	928 – –	4	255 4 6
21	451	20,451 12 4	15,212 7 8	26	1,598 7 10	613 – –	2	78 2 4
22	299	16,790 4 6	12,368 17 10	18	767 7 8	261 10 –	8	467 2 –
23	4,510	235,954 17 1	179,827 6 9	284	25,306 17 2	9,241 16 –	36	3,446 18 11
24	1,295	42,675 18 7	31,838 15 4	97	5,621 6 1	1,331 14 –	4	77 – –
25	1,352	67,382 5 –	50,324 15 3	116	7,274 14 5	2,171 10 6	3	708 3 7
26	917	37,242 18 8	26,885 14 10	51	1,927 14 3	249 10 6	9	1,423 17 –
27	820	47,404 7 5	36,602 9 11	45	5,790 1 7	1,991 1 –	5	119 4 2
28	601	40,523 14 6	31,565 17 11	50	4,923 10 8	1,037 7 6	4	716 2 8
29	270	19,216 14 5	14,455 1 5	22	1,605 4 5	153 12 6	1	20 4 6
30	5,255	254,445 18 7	191,672 14 8	381	27,142 11 5	6,934 16 –	26	3,064 11 11
31	1,213	19,718 16 4	15,082 17 1	86	5,888 9 6	1,054 18 6	3	316 – –
32	697	9,948 2 11	7,469 9 5	36	723 3 11	136 18 8	–	—
33	476	5,986 16 8	4,740 11 –	57	2,613 2 9	295 1 6	14	405 15 4
34	968	15,503 14 10	12,641 8 7	66	4,774 15 8	1,129 8 1	1	6 1 2
35	548	10,664 15 9	7,902 13 8	38	1,769 6 2	955 12 –	3	62 5 –
36	3,902	61,822 6 6	47,836 19 9	283	15,768 18 –	3,571 18 9	21	790 1 6
37	24,867	782,003 – 5	595,078 17 10	1,521	82,599 11 6	24,021 5 –	107	8,335 7 10

RETURN of Appeals by Counties, Provinces, and all Ireland, under the Land Law (Ireland) Act, 1881.

CIVIL BILLS.	LANDLORDS' APPEALS.								
	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.				
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.	
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.	
Antrim	–	—	—	—	–	—	—	—	1
Armagh	2	70 4 10	57 – –	60 – –	–	—	—	—	2
Cavan	95	1,570 16 5	1,114 2 10	1,248 18 6	2	28 16 2	25 15 –	22 10 –	3
Donegal	–	—	—	—	–	—	—	—	4
Down	–	—	—	—	–	—	—	—	5
Fermanagh	7	163 16 8	134 17 –	146 3 4	–	—	—	—	6
Londonderry	3	32 3 8	23 10 –	25 15 –	–	—	—	—	7
Monaghan	4	94 3 10	58 18 6	65 15 –	–	—	—	—	8
Tyrone	27	384 19 6	275 14 1	318 17 –	2	34 10 –	28 18 10	27 18 –	9
TOTAL OF ULSTER	138	2,316 4 11	1,664 2 5	1,865 8 10	4	63 6 2	54 13 10	50 8 –	10
Carlow	–	—	—	—	–	—	—	—	11
Dublin	–	—	—	—	–	—	—	—	12
Kildare	2	31 10 –	30 – –	35 – –	–	—	—	—	13
Kilkenny	6	483 9 11	335 – –	360 5 –	1	59 11 7	50 – –	48 – –	14
King's	4	30 2 6	23 1 –	27 – –	1	10 – –	6 15 –	6 5 –	15
Longford	7	192 2 8	121 5 –	144 – –	–	—	—	—	16
Louth	8	43 13 –	25 8 6	28 – –	–	—	—	—	17
Meath	34	3,330 11 3	2,316 6 3	2,651 15 4	–	—	—	—	18
Queen's	5	216 8 8	165 – –	187 – –	1	19 10 –	17 10 –	17 – –	19
Westmeath	6	644 15 3	456 5 –	483 – –	–	—	—	—	20
Wexford	2	111 12 2	84 – –	92 – –	–	—	—	—	21
Wicklow	–	—	—	—	–	—	—	—	22
TOTAL OF LEINSTER	69	5,084 5 5	3,556 5 9	4,008 – 4	3	89 1 7	74 5 –	71 5 –	23
Clare	–	—	—	—	–	—	—	—	24
Cork	114	4,399 3 –	2,817 14 6	3,141 16 7	2	33 10 –	25 – –	22 – –	25
Kerry	13	720 10 1	454 5 –	507 10 –	–	—	—	—	26
Limerick	7	583 11 2	446 10 3	480 10 –	–	—	—	—	27
Tipperary	9	221 8 4	162 1 2	191 11 –	–	—	—	—	28
Waterford	73	3,623 16 8	2,238 4 1	2,555 – 6	–	—	—	—	29
TOTAL OF MUNSTER	216	9,548 9 3	6,118 15 –	6,876 8 1	2	33 10 –	25 – –	22 – –	30
Galway	–	—	—	—	–	—	—	—	31
Leitrim	49	632 5 10	401 18 8	459 17 2	3	46 8 –	36 5 –	33 16 –	32
Mayo	47	882 7 4	652 4 6	729 17 5	1	15 14 –	9 17 –	4 5 –	33
Roscommon	7	130 14 8	85 15 –	101 14 –	–	—	—	—	34
Sligo	1	98 – 3	81 9 –	86 10 –	1	42 7 4	35 – –	33 – –	35
TOTAL OF CONNAUGHT	104	1,743 8 1	1,221 7 2	1,377 18 7	5	104 9 4	81 2 –	71 1 –	36
TOTAL OF IRELAND	527	18,692 7 8	12,560 10 4	14,127 15 10	14	290 7 1	235 – 10	214 14 –	37

from the commencement of Proceedings on 22nd August 1881, up to the 31st March 1894—*continued.*

TENANTS' APPEALS.

	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.			
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.
1	–	—	—	—	–	—	—	—
2	–	—	—	—	–	—	—	—
3	–	—	—	—	–	—	—	—
4	–	—	—	—	19	519 4 2	457 10 7	411 17 6
5	–	—	—	—	1	3 5 –	3 5 –	2 5 –
6	–	—	—	—	4	37 12 6	31 7 3	27 4 6
7	–	—	—	—	1	35 – –	28 – –	25 – –
8	–	—	—	—	4	94 19 8	77 10 –	67 8 –
9	1	13 – –	11 17 5	13 – –	9	126 18 –	109 16 5	96 10 4
10	1	13 – –	11 17 5	13 – –	38	816 19 4	707 9 6	630 5 4
11	–	—	—	—	–	—	—	—
12	–	—	—	—	–	—	—	—
13	–	—	—	—	2	58 17 4	77 – –	58 – –
14	–	—	—	—	6	259 12 6	230 10 8	212 – –
15	–	—	—	—	7	388 18 –	368 18 –	336 14 –
16	–	—	—	—	6	69 11 10	59 14 6	51 10 –
17	–	—	—	—	–	—	—	—
18	–	—	—	—	4	427 17 8	385 10 –	358 – –
19	–	—	—	—	3	125 17 –	120 – –	100 10 –
20	–	—	—	—	1	33 – –	20 – –	16 – –
21	–	—	—	—	–	—	—	—
22	–	—	—	—	–	—	—	—
23	–	—	—	—	29	1,363 14 4	1,261 13 2	1,132 14 –
24	–	—	—	—	3	41 16 9	41 16 9	37 10 –
25	–	—	—	—	18	705 11 1	733 10 8	554 14 6
26	1	31 5 8	24 – –	24 10 –	37	1,371 10 6	1,077 19 –	953 5 –
27	–	—	—	—	8	442 1 2	359 2 –	315 5 –
28	–	—	—	—	11	649 2 –	605 5 –	559 19 6
29	–	—	—	—	3	256 15 1	221 16 –	196 – –
30	1	31 5 8	24 – –	24 10 –	80	3,466 16 7	3,039 9 5	2,616 14 –
31	–	—	—	—	1	63 10 6	63 10 6	40 – –
32	–	—	—	—	–	—	—	—
33	1	41 5 8	35 15 –	36 – –	8	297 16 6	283 13 –	230 15 –
34	–	—	—	—	–	—	—	—
35	–	—	—	—	3	37 11 10	30 5 –	25 – –
36	1	41 5 8	35 15 –	36 – –	12	398 18 10	377 8 6	295 15 –
37	3	85 11 4	71 12 5	73 10 –	159	6,046 9 1	5,386 – 7	4,675 8 4

RETURN of Appeals by Counties, Provinces, and all Ireland, under the Land Law (Ireland) Act, 1881,

CIVIL BILLS.	CROSS APPEALS.								
	Where the Rent fixed by Court below Increased.				Where the Rent fixed by Court below Reduced.				
	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Increased Rent.	Number of Appeals.	Amount of Former Rent.	Amount of Rent fixed by Court below.	Amount of Reduced Rent.	
		£. s. d.	£. s. d.	£. s. d.		£. s. d.	£. s. d.	£. s. d.	
Antrim	–	—	—	—	–	—	—	—	1
Armagh	–	—	—	—	–	—	—	—	2
Cavan	2	18 9 4	12 10 –	14 10 –	–	—	—	—	3
Donegal	–	—	—	—	3	67 16 9	66 18 9	57 – –	4
Down	–	—	—	—	–	—	—	—	5
Fermanagh	1	24 10 –	21 10 –	24 10 –	1	75 15 6	60 – –	56 – –	6
Londonderry	–	—	—	—	–	—	—	—	7
Monaghan	2	29 8 –	22 – –	23 10 –	–	—	—	—	8
Tyrone	1	75 – –	55 – –	58 – –	5	320 7 –	235 10 –	216 – –	9
TOTAL OF ULSTER	6	147 7 4	111 – –	120 10 –	9	463 19 3	362 8 9	329 – –	10
Carlow	–	—	—	—	–	—	—	—	11
Dublin	–	—	—	—	–	—	—	—	12
Kildare	–	—	—	—	–	—	—	—	13
Kilkenny	1	9 15 6	5 – –	5 16 –	–	—	—	—	14
King's	1	26 15 –	19 – –	23 – –	–	—	—	—	15
Longford	3	132 1 –	103 – –	119 – –	3	190 4 –	176 3 –	156 – –	16
Louth	–	—	—	—	–	—	—	—	17
Meath	8	1,459 10 –	925 10 –	1,025 16 9	–	—	—	—	18
Queen's	4	129 10 –	99 15 –	116 8 –	–	—	—	—	19
Westmeath	–	—	—	—	–	—	—	—	20
Wexford	–	—	—	—	–	—	—	—	21
Wicklow	–	—	—	—	–	—	—	—	22
TOTAL OF LEINSTER	17	1,757 11 6	1,152 5 –	1,290 – 9	3	190 4 –	176 3 –	156 – –	23
Clare	–	—	—	—	–	—	—	—	24
Cork	16	1,040 8 4	627 6 –	705 16 4	5	179 13 –	137 10 –	126 3 –	25
Kerry	4	154 – –	95 10 –	103 10 –	4	256 12 4	219 10 –	204 – –	26
Limerick	5	554 18 8	387 – –	401 11 –	3	94 15 6	72 13 –	67 – 3	27
Tipperary	1	21 12 6	14 12 –	15 10 –	1	180 – –	160 – –	137 10 –	28
Waterford	2	273 – –	215 8 –	238 – –	–	—	—	—	29
TOTAL OF MUNSTER	28	2,043 19 6	1,339 16 –	1,464 7 4	13	711 – 10	589 13 –	534 13 3	30
Galway	–	—	—	—	–	—	—	—	31
Leitrim	–	—	—	—	–	—	—	—	32
Mayo	1	36 – –	36 – –	40 – –	3	31 13 –	29 – –	25 – –	33
Roscommon	–	—	—	—	–	—	—	—	34
Sligo	–	—	—	—	–	—	—	—	35
TOTAL OF CONNAUGHT	1	36 – –	36 – –	40 – –	3	31 13 –	29 – –	25 – –	36
TOTAL OF IRELAND	52	3,984 18 4	2,639 1 –	2,914 18 1	28	1,396 17 1	1,157 4 9	1,044 13 3	37

from the commencement of Proceedings on 22nd August 1881, up to the 31st March 1894—*continued.*

APPEALS WHICH WERE WITHDRAWN, STRUCK OUT, DISMISSED, WHEN ORDER BELOW WAS CONFIRMED, &c.

	Cases in which the Judicial Rent fixed by Court below was confirmed by Appeals being Withdrawn, Struck Out, or when the Judicial Rent was confirmed by Order.			Cases in which no Judicial Rent was fixed: (*a*) When Applications were Dismissed by Court below, and Dismiss affirmed on Appeal; (*b*) Where Judicial Rent was fixed by Court below, and Originating Notice Dismissed on Appeal.			Cases where the Court below Dismissed the Originating Notices, and on Appeal the Cases were remitted to fix a Rent.	
	Number.	Former Rent.	Judicial Rent.	Number.	Former Rent.	Judicial Rent.	Number.	Former Rent.
		£. s. d.	£. s. d.		£. s. d.	£. s. d.		£. s. d.
1	—	—	—	—	—	—	—	—
2	—	—	—	—	—	—	—	—
3	210	3,767 3 6	2,833 7 8	12	235 11 7	121 - -	—	—
4	32	840 13 5	611 16 10	8	116 3 2	28 9 -	—	
5	1	59 6 6	49 - -	1	12 - -	—	—	—
6	42	1,081 16 9	887 8 11	4	99 6 -	70 10 -	—	—
7	142	1,019 12 8	799 3 1	5	94 17 6	2 16 -	1	10 - -
8	41	641 1 9	494 15 11	—	—	—	—	—
9	115	1,629 7 5	1,170 7 6	13	147 5 -	30 2 6	—	—
10	583	9,039 2 -	6,845 19 11	43	705 3 3	252 17 6	1	10 - -
11	—	—	—	—	—	—	—	—
12	—	—	—	—	—	—	—	—
13	30	731 10 -	565 4 -	1	5 14 7	—	—	—
14	28	1,268 9 -	971 4 6	2	172 - -	155 15 -	—	—
15	54	1,544 7 11	1,241 12 7	2	36 - -	—	—	—
16	127	3,198 12 6	2,476 3 10	6	211 8 8	101 - -	—	—
17	4	236 10 -	193 5 -	3	106 - -	—	—	—
18	72	5,302 7 10	4,030 8 -	9	839 18 2	660 10 -	—	—
19	12	327 9 11	236 1 -	3	87 6 10	—	—	—
20	41	1,981 9 1	1,454 3 6	1	30 - -	20 - -	1	40 1 6
21	1	57 4 -	46 - -	—	—	—	—	—
22	3	69 - -	44 11 10	2	23 - -	—	—	—
23	372	14,717 - 3	11,258 14 3	29	1,511 8 3	937 5 -	1	40 1 6
24	3	303 19 2	280 15 -	1	6 6 -	—	—	—
25	344	13,595 5 2	9,264 7 4	34	1,467 2 1	659 15 -	3	23 - -
26	149	5,403 11 4	3,815 - -	14	421 1 8	106 15 -	1	22 10 -
27	92	5,217 17 -	3,907 13 4	10	335 17 1	18 10 -	1	52 13 9
28	54	1,503 19 1	1,134 16 2	10	228 5 2	1 - -	—	—
29	106	5,012 13 5	3,387 15 8	16	478 12 7	269 15 -	—	—
30	748	31,037 5 2	21,790 7 6	85	2,937 4 7	1,055 15 -	5	98 3 9
31	5	268 - 1	86 - -	—	—	—	—	—
32	192	2,242 6 8	1,512 6 2	10	107 8 1	34 5 -	1	10 10 -
33	158	2,092 - 8	1,661 16 8	37	1,125 7 3	340 10 -	1	47 19 6
34	51	541 9 3	406 9 7	1	120 - -	92 5 -	—	—
35	18	276 11 6	241 3 6	1	21 - -	18 - -	—	—
36	424	5,420 8 2	3,907 15 11	49	1,373 15 4	485 - -	2	58 9 6
37	2,127	60,213 15 7	43,802 17 7	206	6,527 11 5	2,730 17 6	9	206 14 9

APPENDIX, No. 16.

PAPER handed in by Mr. Justice *Bewley*, July 1894.

RETURN for the period from the 22nd August 1881 to the 31st March 1894 of all Cases in which the Sub-Commission Sub-Section 3, of the Land Law (Ireland) Act, 1881, and the

COUNTY.	Record No.	Appellant.	LANDLORD.	TENANT.
Antrim	3,575	L. and T.	Rev. Archibald Crawford	George Kidd
Ditto	4,245	T.	Mathew Snoddy	James Dawson and William J. M'Lean, representatives of William M'Murty, deceased.
Ditto	7,772	L.	Robert Wilson and William Henderson, trustees of John Wilson, deceased.	Robert Wilson
Ditto	9,121	L.	Trustees of Bernard M'Gill	William Steele
Ditto	9,267	L. and T.	John Boyd	Andrew Boyd
Monaghan	18	T.	Earl of Dartrey	Henry Jebb
Ditto	179	L.	Lord Rossmore	Margaret Cleary
Ditto	398 C.B.	T.	Andrew J. Crawford	Mary Anne Curran
Tyrone	12,296	L.	James Nethery	John M'Quade
Ditto	12,272	T.	John M'Canny	Bridget Morris
Cork	14,325	L.	George Nicholls	Edward Wood
Ditto	14,793	L. and T.	John Magner	John T. Cornwall
Tipperary	223	T.	Joseph Griffith	Catherine Cruise
Carlow	791	L.	Annette C. Pack Beresford and William Clayton Brown. Guardians of D. R. Pack Beresford.	Daniel Kearney (Lorum) Administrator of Bryan Kavanagh, deceased.
Louth	110 C.B.	T.	Joseph Arthur Coulter	The trustees and executors of Gordon Jackson, deceased.
Meath	958	L.	Augusta E. Magan	Mary Eliza Duignan, executrix of Christopher Duignan and Andrew Duignan, deceased.
Wicklow	679	T.	Lieutenant Colonel Atkinson	Bartholomew Fitzsimons
Ditto	663	–	Earl Fitzwilliam	Patrick Carroll
Queen's	3,453	–	Lord De Vesci	E. G. White
Leitrim	6,430	T.	John Crawford, Benjamin Crawford, and Arthur Crawford.	Robert Notley, executors of Thomas Henry Cox, deceased.
Antrim	48 C.B.	L.	Colonel Magenis	Eliza Anne Wallace Mullins
Ditto	79 C.B.	–	Thomas Montgomery	David Kyle
Armagh	34 C.B.	–	E. T. Wakefield	Alexander M'Kee and Elizabeth M'Kee.
Cavan	2,472	L. and T.	John Henry Leslie	Andrew Savage
Tyrone	8,960	L.	A. H. R. Sproule	James Donnelly
Ditto	9,425	L.	Colonel J. A. Caulfield	John Quinn
Carlow	36 C.B.	L.	Nicholas Phelan	Anne Doyle
Louth	872	T.	Lord Louth	John William Horan
Meath	50	L.	Marquis of Headford	Peter Reilly
Wexford	949	L.	George F. Brooke	Robert Morris
Cork	283 C.B.	–	R. U. P. Fitzgerald	Maurice Downey
Kerry	6,640	–	Edward Sealy	Rowland Eagar

Irish Land Commission, Dublin,
2 August 1894.

APPENDIX, No. 16.

PAPER handed in by Mr. Justice *Bewley*, July 1894.

Court, or Civil Bill Court, made an Order on an Application to Fix the True Value of a Tenancy, under Section 1, Land Commission Re-heard the Application on Appeal.

Area.	Rent of Holding.	Value of Tenancy Fixed by Sub-Commission or Civil Bill Court.	Value of Tenancy Fixed on Appeal.	Percentage of Increase or Decrease marked respectively + or —.	REMARKS.
A. R. P.	£. s. d.	£. s. d.	£.		
12 2 0	17 17 – reduced to 12 5 –	130 – –	150	15·4 +	
9 2 35	8 15 –	60 – –	70	16·6 +	
90 1 32	65 – –	950 – –	600	36·8 —	
16 2 24	14 – –	Dismissed -	Remitted to fix value - -		Value fixed by Sub-Commission at 175*l.*
134 0 0	42 10 –	250 – –	270	8·0 +	
6 3 5	5 3 6	67 – –	95	41·8 +	
18 0 0	12 18 2	140 – –	120	14·3 —	
20 0 15	15 – –	160 – –	200	25·0 +	
12 3 32	3 10 –	100 – –	70	30·0 —	
43 0 0	4 12 –	70 – –	90	28·5 +	
6 0 0	2 – –	160 – –	110	31·2 —	
122 2 16	167 3 6	1,220 – –	1,350	10·6 +	
21 0 20	13 – –	90 – –	150	66·6 +	
12 0 30	55 – –	350 – –	275	21·4 —	
80 1 0	160 – –	200 – –	600	200·0 +	
466 2 8	253 3 11	2,500 – –	1,550	38·0 —	
60 3 12	59 9 2	308 15 –	390	26·3 +	
52 3 22	30 – –	280 – –	220	21·4 —	
8 1 8	10 8 –	78 10 –	104	32·4 +	
69 0 0	70 – –	300 – –	450	50·0 +	
76 2 30	30 – –	Dismissed -	Affirmed.	—	
8 0 15	10 16 –	200 – –	ditto.	—	
4 3 0	3 – –	60 – –	ditto.	—	
10 0 0 (Irish.)	13 15 –	80 – –	Withdrawn.	—	
2 2 12	8 – –	40 – –	ditto.	—	
28 0 0	21 14 10	25 10 –	Affirmed.	—	
3 0 0	3 – –	Dismissed -	Remitted to fix value - -		Value fixed by County Court Judge at 50*l.*
69 0 0	87 15 –	650 – –	Withdrawn.	—	
102 0 7	82 15 –	No rule - -	325	—	
185 3 29	95 4 –	500 – –	Withdrawn.	—	
6 0 0	6 8 4	30 – –	Affirmed.	—	
39 0 28	27 – –	175 – –	ditto.	—	

APPENDIX, No. 17.

PAPER handed in by Mr. Justice *Bewley*.

IRISH LAND COMMISSION.

No. II.—RETURN according to PROVINCES and COUNTIES, showing the Percentages of Reduction on the Proceedings to the Year

PROVINCE AND COUNTY.		RENTS FIXED BY LAND COMMISSION.												
		YEARLY TENANCIES.				LEASEHOLD TENANCIES.				TOTAL.				
		Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	
			£.	£.			£.	£			£.	£.		
ULSTER	ANTRIM	4,624	101,853	80,810	20·6	1,706	45,695	33,947	25·7	6,330	147,548	114,757	22·2	1
	ARMAGH	6,944	97,868	74,762	23·6	508	8,657	6,385	25·7	7,452	106,525	81,147	23·8	2
	CAVAN	4,489	66,272	52,367	20·9	413	11,986	9,060	24·4	4,902	78,258	61,427	21·5	3
	DONEGAL	9,182	82,564	64,931	21·3	424	13,461	10,400	22·7	9,606	96,025	75,331	21·5	4
	DOWN	6,931	146,480	117,837	19·5	802	24,052	17,345	27·8	7,733	170,532	135,182	20·7	5
	FERMANAGH	3,195	54,258	43,992	18·9	213	5,399	4,140	23·3	3,408	59,657	48,132	19·3	6
	LONDONDERRY	2,586	52,289	41,496	20·6	416	14,420	10,919	24·2	3,002	66,709	52,415	21·4	7
	MONAGHAN	5,633	77,454	58,884	23·9	257	6,583	4,796	27·1	5,890	84,037	63,680	24·2	8
	TYRONE	8,281	116,997	89,917	23·1	838	18,464	14,034	23·9	9,119	135,461	103,951	23·2	9
	TOTAL	51,865	796,035	624,996	21·4	5,577	148,717	111,026	25·3	57,442	944,752	736,022	22·0	10
LEINSTER	CARLOW	1,163	36,628	28,466	22·2	511	32,161	23,837	25·8	1,674	68,789	52,303	23·9	11
	DUBLIN	548	26,593	21,983	17·3	459	51,256	39,128	23·6	1,007	77,848	61,111	21·4	12
	KILDARE	989	35,474	28,883	18·5	542	52,662	41,563	21·7	1,531	88,136	70,446	20·0	13
	KILKENNY	2,615	78,290	60,894	22·2	577	33,129	24,876	24·9	3,192	111,419	85,770	23·0	14
	KING'S COUNTY	1,850	44,565	36,614	17·8	370	21,613	16,709	22·6	2,220	66,178	53,323	19·4	15
	LONGFORD	2,174	41,719	31,776	23·8	368	16,410	12,308	24·9	2,542	58,129	44,084	24·1	16
	LOUTH	1,551	41,260	31,791	22·9	338	23,529	17,835	24·1	1,889	64,789	49,626	23·4	17
	MEATH	1,792	67,888	55,348	18·4	813	91,911	72,088	21·5	2,605	159,799	127,436	20·3	18
	QUEEN'S COUNTY	2,050	55,010	42,329	23·0	448	26,645	19,777	25·7	2,498	81,655	62,106	23·9	19
	WESTMEATH	1,970	60,152	49,042	18·4	445	41,855	33,704	19·4	2,415	102,007	82,746	18·8	20
	WEXFORD	2,545	71,749	55,820	22·2	1,139	53,092	39,588	25·4	3,684	124,841	95,408	23·5	21
	WICKLOW	1,225	42,598	33,472	21·4	520	38,371	29,406	23·3	1,745	80,969	62,878	22·3	22
	TOTAL	20,472	601,925	476,418	20·8	6,530	482,634	370,819	23·1	27,002	1,084,559	847,237	21·8	23
CONNAUGHT	GALWAY	9,819	114,866	88,493	22·9	402	17,351	12,539	21·9	10,221	132,217	101,032	23·5	24
	LEITRIM	4,672	52,670	40,618	22·8	426	6,497	4,646	20·8	5,098	59,167	45,264	23·4	25
	MAYO	9,349	80,775	64,624	19·9	160	6,200	4,957	20·0	9,509	86,975	69,581	19·9	26
	ROSCOMMON	7,186	88,597	67,708	23·5	744	21,277	16,600	21·9	7,930	109,874	84,308	23·2	27
	SLIGO	5,192	62,669	49,020	21·8	282	9,365	6,920	26·2	5,474	72,034	55,940	22·3	28
	TOTAL	36,218	399,577	310,463	22·3	2,014	60,690	45,662	24·7	38,232	460,267	356,125	22·5	29
MUNSTER	CLARE	5,654	124,245	95,773	22·9	1,234	43,196	30,499	29·3	6,888	167,441	126,272	24·5	30
	CORK	6,884	215,956	173,978	19·4	4,004	200,067	150,399	24·3	10,888	416,023	324,377	22·0	31
	KERRY	4,222	103,124	79,738	22·6	601	28,947	20,030	30·0	4,823	132,071	99,768	24·4	32
	LIMERICK	2,861	119,073	93,629	21·3	1,659	100,507	74,008	26·2	4,520	219,580	167,637	23·6	33
	TIPPERARY	4,259	145,250	117,198	19·3	1,347	79,055	59,374	24·8	5,606	224,305	176,572	21·2	34
	WATERFORD	1,465	60,615	48,619	19·7	347	25,820	18,289	29·2	1,812	86,435	66,908	22·5	35
	TOTAL	25,345	768,263	608,935	20·7	9,192	477,592	352,599	26·1	34,537	1,245,855	961,534	22·8	36

SUMMARY.

ULSTER	51,865	796,035	624,996	21·4	5,577	148,717	111,026	25·3	57,442	944,752	736,022	22·0	37
LEINSTER	20,472	601,925	476,418	20·8	6,530	482,634	370,819	23·1	27,002	1,084,559	847,237	21·8	38
CONNAUGHT	36,218	399,577	310,463	22·3	2,014	60,690	45,662	24·7	38,232	460,267	356,125	22·5	39
MUNSTER	25,345	768,263	608,935	20·7	9,192	477,592	352,599	26·1	34,537	1,245,855	961,534	22·8	40
TOTAL	133,900	2,565,800	2,020,812	21·2	23,313	1,169,633	880,106	24·7	157,213	3,735,433	2,900,918	22·3	41

APPENDIX, No. 17.

PAPER handed in by Mr. Justice *Bewley*.

IRISH LAND COMMISSION.

Former Rents, in Rents Fixed Judicially, and in Rents fixed by Agreement, from the commencement of ended 31st day of March 1894.

RENTS FIXED BY CIVIL BILL COURTS.

	Yearly Tenancies.			Leasehold Tenancies.			Total.			
	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.
		£.	£.			£.	£.			£.	£.	
1	—	—	—	—	—	—	—	—	—	—	—	—
2	33	393	305	22·5	6	131	103	21·0	39	524	408	22·2
3	1,832	24,280	18,458	23·9	255	3,933	2,857	27·3	2,087	28,213	21,315	24·4
4	249	3,422	2,708	20·8	48	1,967	1,539	21·7	297	5,389	4,247	21·1
5	5	54	40	24·3	4	122	98	19·9	9	176	138	21·5
6	205	3,656	3,000	17·9	30	583	463	20·5	235	4,239	3,463	18·3
7	314	2,641	2,090	20·8	17	154	120	22·1	331	2,795	2,210	20·9
8	157	2,567	1,980	22·8	8	109	88	19·1	165	2,676	2,078	22·4
9	322	4,403	3,389	23·0	15	535	411	23·3	337	4,938	3,790	23·2
10	3,117	41,416	31,970	22·8	383	7,534	5,679	24·6	3,500	48,950	37,649	23·4
11	8	192	165	20·2	1	89	72	19·1	9	281	237	15·6
12	—	—	—	—	1	39	32	17·9	1	39	32	17·9
13	73	1,524	1,282	15·9	27	790	668	15·4	100	2,314	1,950	15·7
14	74	2,913	2,312	20·6	21	1,258	812	35·5	95	4,171	3,124	25·1
15	274	5,779	4,704	18·4	42	2,038	1,574	22·7	316	7,817	6,278	19·6
16	747	12,192	9,359	23·2	132	4,000	3,121	21·9	879	16,192	12,480	22·9
17	98	2,465	1,903	22·8	20	1,344	1,028	23·4	118	3,809	2,931	23·0
18	333	13,556	10,421	23·1	126	9,761	7,501	23·1	459	23,317	17,922	23·1
19	30	804	621	22·8	3	66	63	4·5	33	870	684	21·3
20	416	9,244	7,167	22·4	85	3,835	2,828	26·3	501	13,079	9,995	23·5
21	6	213	165	22·1	2	77	51	34·3	8	290	216	25·8
22	8	152	121	19·5	2	97	66	31·9	10	249	187	24·9
23	2,067	49,034	38,220	22·0	462	23,394	17,816	23·9	2,529	72,428	56,036	22·6
24	88	1,038	813	21·7	9	121	98	19·5	97	1,159	911	21·3
25	1,180	11,631	8,322	28·4	96	1,079	660	38·8	1,276	12,710	8,982	29·2
26	3,500	31,128	24,496	21·3	67	2,019	1,569	22·0	3,567	33,147	26,065	21·3
27	473	5,662	4,306	23·9	3	66	57	12·5	476	5,728	4,363	23·8
28	329	4,573	3,624	20·7	—	—	—	—	329	4,573	3,624	20·7
29	5,570	54,032	41,561	23·0	175	3,285	2,384	27·4	5,745	57,317	43,945	23·3
30	29	843	715	15·1	2	72	47	34·1	31	915	762	16·7
31	707	17,287	12,978	24·9	336	13,761	9,188	33·2	1,043	31,048	22,166	25·3
32	811	16,740	11,974	28·4	321	11,530	8,000	30·6	1,132	28,270	19,974	29·3
33	514	13,515	14,813	24·0	145	7,814	5,719	26·8	659	27,329	20,532	24·8
34	389	9,060	7,240	21·1	55	2,374	1,809	23·8	444	11,434	9,049	20·8
35	383	14,159	10,570	25·2	73	3,022	1,786	40·8	456	17,181	12,356	28·0
36	2,833	77,604	58,290	24·8	932	38,573	26,549	31·1	3,765	116,177	84,839	26·9

SUMMARY.

37	3,117	41,416	31,970	22·8	383	7,534	5,679	24·6	3,500	48,950	37,649	23·4
38	2,067	49,034	38,220	22·0	462	23,394	17,816	23·9	2,529	72,428	56,036	22·6
39	5,570	54,032	41,561	23·0	175	3,285	2,384	27·4	5,745	57,317	43,945	23·3
40	2,833	77,604	58,290	24·8	932	38,573	26,549	31·1	3,765	116,177	84,839	26·9
41	13,587	222,086	170,041	23·4	1,952	72,786	52,428	27·9	15,539	294,872	222,469	24·5

APPENDIX, No. 17—*continued.*

IRISH LAND COMMISSION.

No. II.—RETURN according to PROVINCES and COUNTIES, showing the Percentages of Reduction on the Proceedings to the Year

PROVINCE AND COUNTY.		RENTS FIXED BY LAND COMMISSION AND CIVIL BILL COURTS.												
		Yearly Tenancies.				Leasehold Tenancies.				Total.				
		Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	
			£.	£.			£.	£.			£.	£.		
ULSTER	ANTRIM	4,624	101,853	80,510	20·6	1,706	45,695	33,947	25·7	6,330	147,548	114,757	22·2	1
	ARMAGH	6,977	98,261	75,067	23·5	514	8,788	6,488	26·1	7,491	107,049	81,555	23·7	2
	CAVAN	6,321	90,552	70,825	21·7	668	15,919	11,917	25·1	6,989	106,471	82,742	22·2	3
	DONEGAL	9,431	85,986	67,639	21·3	472	15,428	11,939	22·6	9,903	101,414	79,578	21·5	4
	DOWN	6,936	146,534	117,877	19·5	806	24,174	17,443	27·8	7,742	170,708	135,320	20·7	5
	FERMANAGH	3,400	57,914	46,992	18·8	243	5,982	4,603	23·0	3,643	63,896	51,595	19·2	6
	LONDONDERRY	2,900	54,930	43,586	20·6	433	14,574	11,039	24·2	3,333	69,504	54,625	21·4	7
	MONAGHAN	5,790	80,021	60,864	23·9	265	6,692	4,884	27·0	6,055	86,713	65,748	24·1	8
	TYRONE	8,603	121,400	93,306	23·1	853	18,999	14,445	23·9	9,456	140,399	107,751	23·2	9
	TOTAL	54,982	837,451	656,966	21·5	5,960	156,251	116,705	25·3	60,942	993,702	773,671	22·1	10
LEINSTER	CARLOW	1,171	36,820	28,631	22·2	512	32,250	23,909	25·8	1,683	69,070	52,540	23·9	11
	DUBLIN	548	26,592	21,983	17·3	460	51,295	39,160	23·6	1,008	77,887	61,143	21·4	12
	KILDARE	1,062	36,998	30,165	18·4	569	53,452	42,231	20·9	1,631	90,450	72,396	19·9	13
	KILKENNY	2,689	81,203	63,206	22·1	598	34,387	25,688	25·2	3,287	115,590	88,894	23·0	14
	KING'S COUNTY	2,124	50,344	41,318	17·9	412	23,651	18,283	22·7	2,536	73,995	59,601	19·4	15
	LONGFORD	2,921	53,911	41,135	23·7	500	20,410	15,429	24·4	3,421	74,321	56,564	23·8	16
	LOUTH	1,649	43,725	33,694	22·9	358	24,873	18,863	24·1	2,007	68,598	52,557	23·3	17
	MEATH	2,125	81,444	65,769	19·2	939	101,672	79,589	21·7	3,064	183,116	145,358	20·6	18
	QUEEN'S COUNTY	2,080	55,814	42,950	23·0	451	26,711	19,840	25·7	2,531	82,525	62,790	23·9	19
	WESTMEATH	2,386	69,396	56,209	19·0	530	45,690	36,532	20·0	2,916	115,086	92,741	19·4	20
	WEXFORD	2,551	71,962	55,985	22·2	1,141	53,169	39,639	25·5	3,692	125,131	95,624	23·5	21
	WICKLOW	1,233	42,750	33,593	21·4	522	38,468	29,472	25·3	1,755	81,218	63,065	23·2	22
	TOTAL	22,539	660,959	514,638	20·9	6,992	506,028	388,635	23·3	29,531	1,156,987	903,273	21·9	23
CONNAUGHT	GALWAY	9,907	115,904	89,306	22·4	411	17,472	12,637	27·6	10,318	133,376	101,943	23·5	24
	LEITRIM	5,852	64,301	48,940	23·8	522	7,576	5,306	29·8	6,374	71,877	54,246	24·5	25
	MAYO	12,849	111,903	89,120	20·3	227	8,219	6,526	20·5	13,076	120,122	95,646	20·3	26
	ROSCOMMON	7,659	94,259	72,014	23·6	747	21,343	16,657	21·9	8,406	115,602	88,671	23·2	27
	SLIGO	5,521	67,242	52,644	21·7	282	9,365	6,920	26·1	5,803	76,607	59,564	22·2	28
	TOTAL	41,788	453,609	352,024	22·4	2,189	63,975	48,046	24·8	43,977	517,584	400,070	22·6	29
MUNSTER	CLARE	5,683	125,088	96,488	22·6	1,236	43,268	30,546	29·4	6,919	168,356	127,034	24·5	30
	CORK	7,591	233,243	186,956	19·8	4,340	213,828	159,587	25·3	11,931	447,071	346,543	22·4	31
	KERRY	5,033	119,864	91,712	23·4	922	40,477	28,030	30·7	5,955	160,341	119,742	25·2	32
	LIMERICK	3,375	138,588	108,442	21·8	1,804	103,321	79,727	26·3	5,179	246,909	188,169	23·7	33
	TIPPERARY	4,648	154,310	124,438	19·3	1,402	81,429	61,183	24·8	6,050	235,739	185,621	21·2	34
	WATERFORD	1,848	74,774	59,189	20·8	420	28,842	20,075	30·3	2,268	103,616	79,264	23·5	35
	TOTAL	28,178	845,867	667,225	21·1	10,124	516,165	379,148	26·5	38,302	1,362,032	1,046,373	23·1	36

SUMMARY.

ULSTER	54,982	837,451	656,966	21·5	5,960	156,251	116,705	25·3	60,942	993,702	773,671	22·1	37
LEINSTER	22,539	660,959	514,638	20·9	6,992	506,028	388,635	23·3	29,531	1,156,987	903,273	21·9	38
CONNAUGHT	41,788	453,609	352,024	22·4	2,189	63,975	48,046	24·8	43,977	517,584	400,070	22·6	39
MUNSTER	28,178	845,867	667,225	21·1	10,124	516,165	379,148	26·5	38,302	1,362,032	1,046,373	23·1	40
TOTAL	*147,487	2,787,886	2,190,853	21·3	25,265	1,242,419	932,534	24·9	172,752	4,030,305	3,123,387	22·4	41

Irish Land Commission, Dublin, 3 August 1894.

* Including 37 arbitration cases.

APPENDIX, No. 17—*continued.*

IRISH LAND COMMISSION.

Former Rents, in Rents Fixed Judicially, and in Rents fixed by Agreement, from the commencement of ended 31st day of March 1894.

	JUDICIAL RENTS FIXED BY AGREEMENT.										Differences in the Percentages of Reduction in Former Rents, in Rents fixed Judicially, and Rents fixed by Agreement.	OBSERVATIONS.
	Land Commission.			Civil Bill Courts.			Total.					
	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.	Number.	Former Rent.	Judicial Rent.	Percentage of Reduction.		
		£.	£.			£.	£.			£.	£.			
1	8,684	159,567	134,712	15·5	–	–	—	—	8,684	159,567	134,712	15·5	6·7 Less in reduction percentage in agreements.	No notifications received of judicial rents fixed in this county (if any) by Civil Bill Court.
2	6,575	88,939	72,062	19·0	1	35	26	26·1	6,576	88,974	72,088	18·9	4·8 „ „	
3	6,051	81,214	66,715	17·8	459	6,276	5,049	19·5	6,510	87,490	71,764	17·9	4·3 „ „	
4	8,731	76,735	63,610	17·1	27	233	210	10·2	8,758	76,968	63,820	17·0	4·5 „ „	
5	11,005	182,917	153,124	16·3	3	32	19	40·4	11,008	182,949	153,143	16·2	4·5 „ „	
6	3,574	58,922	49,192	16·5	16	368	314	14·8	3,590	59,290	49,506	16·5	2·7 „ „	
7	7,061	99,971	83,793	16·2	3	58	47	18·2	7,064	100,029	83,840	16·1	5·3 „ „	
8	4,152	54,867	45,321	17·4	1,522	19,132	16,565	13·4	5,674	73,999	61,886	16·2	7·9 „ „	
9	8,838	116,595	96,246	17·4	16	139	110	20·6	8,854	116,734	96,356	17·4	5·8 „ „	
10	64,671	919,727	764,775	16·8	2,047	26,273	22,340	15·0	66,718	946,000	787,115	16·7	5·4 „ „	
11	1,122	33,993	27,370	19·5	8	222	187	16·1	1,130	34,215	27,557	19·4	4·5 Less in reduction percentage in agreements.	
12	324	16,634	13,538	18·6	1	11	9	18·2	325	16,645	13,547	18·6	2·8 „ „	
13	889	40,393	34,758	13·9	548	35,486	29,393	17·2	1,437	75,879	64,151	15·4	4·5 „ „	
14	1,654	44,562	36,668	17·7	5	333	299	10·1	1,659	44,895	36,967	17·6	5·4 „ „	
15	838	21,364	17,926	16·1	36	932	800	14·0	874	22,296	18,726	16·0	3·4 „ „	
16	2,039	35,579	28,348	20·0	55	1,202	993	17·4	2,094	36,781	29,341	20·2	3·6 „ „	
17	1,699	45,344	37,459	17·4	18	443	385	13·1	1,717	45,787	37,844	17·3	6·0 „ „	
18	1,027	44,032	37,023	15·9	21	915	755	17·5	1,048	44,947	37,778	15·9	4·7 „ „	
19	1,429	37,707	30,882	18·1	25	323	267	17·5	1,454	38,030	31,149	18·0	5·9 „ „	
20	1,441	42,458	35,766	15·8	4	126	116	7·5	1,445	42,584	35,882	15·7	3·7 „ „	
21	2,267	58,789	47,583	19·1	4	56	54	2·7	2,271	58,845	47,637	19·0	4·5 „ „	
22	1,306	38,089	30,941	18·8	437	14,748	13,019	11·7	1,743	52,837	43,960	16·8	6·4 „ „	
23	16,035	458,944	378,262	17·6	1,162	54,797	46,277	15·5	17,197	513,741	424,539	17·3	4·6 „ „	
24	4,976	48,590	38,927	19·9	183	1,138	918	18·1	5,159	49,728	39,845	19·8	3·7 Less in reduction percentage in agreements.	
25	3,641	39,735	32,284	18·7	130	1,492	1,137	23·8	3,771	41,227	33,421	18·9	5·6 „ „	
26	5,098	45,130	37,399	17·1	2,851	23,247	18,716	19·5	7,949	68,377	56,115	17·9	2·4 „ „	
27	3,339	40,626	32,926	18·9	219	2,698	2,092	22·4	3,558	43,324	35,018	19·1	4·1 „ „	
28	3,737	49,331	40,369	18·1	215	2,897	2,284	21·1	3,952	52,228	42,653	18·2	4·0 „	
29	20,791	223,412	181,905	18·6	3,598	31,472	25,147	20·1	24,389	254,884	207,052	18·7	3·9 „	
30	1,478	30,482	24,092	20·9	8	367	278	24·0	1,486	30,849	24,370	21·0	3·5 Less in reduction percentage in agreements.	
31	3,509	106,291	85,388	19·6	274	7,504	5,822	22·4	3,783	113,795	91,210	19·8	2·6 „ „	
32	2,617	57,201	45,103	21·1	32	829	652	21·4	2,649	58,030	45,755	21·1	4·1 „ „	
33	1,686	69,387	56,302	18·8	16	994	810	18·5	1,702	70,381	57,112	18·8	4·9 „ „	
34	2,783	74,118	60,310	18·6	1	42	35	16·6	2,784	74,160	60,345	18·6	2·6 „ „	
35	1,154	47,419	39,486	16·7	40	1,034	752	27·3	1,194	48,453	40,238	16·9	6·6 „ „	
36	13,227	384,898	310,681	19·3	371	10,770	8,349	22·5	13,598	395,668	319,030	19·3	3·8 „ „	

SUMMARY.

37	64,671	919,727	764,775	16·8	2,047	26,273	22,340	15·0	66,718	946,000	787,115	16·7	5·4 Less in reduction percentage in agreements.
38	16,035	458,944	378,262	17·6	1,162	54,797	46,277	15·5	17,197	513,741	424,539	17·3	4·6 „ „
39	20,791	223,412	181,905	18·6	3,598	31,472	25,147	20·1	24,389	254,884	207,052	18·7	3·9 „ „
40	13,227	384,898	310,681	19·3	371	10,770	8,349	22·5	13,598	395,668	319,030	19·3	3·8 „ „
41	114,724	1,986,981	1,635,623	17·7	7,178	123,312	102,113	17·2	121,902	2,110,293	1,737,736	17·6	4·8 „ „

J. H. Franks, Secretary.

APPENDIX, No. 18.

PAPER handed in by the *Chairman*, 15 August 1894.

Right Honourable John Morley, House of Commons, London.

Dear Sir,

In giving my evidence before your Committee on the working of Irish Land Acts, 1881, I mentioned a case of great hardship where the tenant had been debarred from getting credit for his improvements, owing to his not having claimed them on his "originating notice."

We reduced the rent from 49*l.* 13*s.* 9*d.* to 25*l.*, and you asked, had we in making such a large reduction made any allowance off the gross value of the land. Speaking entirely from memory, I said we had made a little deduction. This answer conveyed the idea to the Committee that our sympathy for the tenant had led us to do what was not perfectly legal. I have only now been able to lay my hands on my old field note-book, and from it I find we made an allowance of 2*l.* 4*s.* 1*d.*, which was perfectly legal, and done with the advice and approval of our Chairman.

The deduction was,—

	£.	*s.*	*d.*
Tithe rentcharge paid by tenant	1	4	1
Off for inconvenience to tenant of public right-of-way through farmyard and some fields	1	–	–
	£. 2	4	1

It was this deduction that was operating in my mind when I said we made him an allowance..

I find a note in my field-book (and which is also in Pink Report of the case) "that we made *no allowance* for improvements when fixing rent, as they had not been claimed on originating notice."

I also see in my notes of evidence taken in Court that the landlord produced a valuer who reduced the old rent by 37½ per cent., without giving any credit to tenant for payment of tithe rentcharge.

I am sorry I could not lay my hands on my note-book sooner, so as to put the correct facts of the case before the Committee, and remove any impression that I may have created that we acted unfairly to the landlord in fixing this rent.

Hoping you will excuse me for offering this explanation, and that it will prove satisfactory to the Committee,

I am, &c.
Thomas MacAfee.

Currysiskan, Ballymoney, County Antrim,
11 August 1894.

P S.—Not having any copy of official evidence, I am sorry I cannot refer you to the numbers of the questions.

APPENDIX, No. 19.

PAPER handed in by the Secretary of the Land Commission, 16 August 1894

LAND LAW IRELAND ACTS, 1881 AND 1887.

IN HER MAJESTY'S COURT OF APPEAL IN IRELAND.

Austin Irwin Cooper - - - - - - - - - Landlord.

Joseph O'Neill - - - - - - - - - - Tenant.

County.	Poor Law Union.	Electoral Division.
Dublin.	Balrothery.	Kinsealy.

Name by which Lands are known on Ordnance Map - - - "The Green," Kinsealy.

Area in Statute Measure.	Rent of Holding.	Gross Poor Law Valuation.
a. r. p.	£. s. d.	£. s. d.
70 3 17	218 14 –	123 – –

Case stated by the Irish Land Commission for the consideration and decision of Her Majesty's Court of Appeal in Ireland, pursuant to the Land Law (Ireland) Acts, 1881 and 1887.

By lease, dated the 28th November 1876, Austin Cooper and Austin Irwin Cooper demised unto Joseph O'Neill, in consideration of a sum of 800*l.* paid to A. J. Cooper, and 5*s.* to A. Cooper for 31 years, that part of the lands of Kinsealy containing 43a. 2r. 39p., Irish plantation measure, at a rent of 218*l.* 14*s.* a year, or 5*l.* per Irish acre. This was a lease made in reversion, the tenant having previously for many years held under a lease for three lives, made on 31st October 1831, one of which, that of Austin Cooper, then was still in being at a rent of 175*l.* This lease of 1831 expired in 1883, on the death of said Austin Cooper, when the said lease of 1876 came into operation.

By Originating Notice dated 10th September 1887, the lessee applied to the Land Commission to fix the fair rent, which by order of 30th January 1888 was fixed by Mr. Kane's Sub-Commission at 170*l.* a year.

The tenant claimed to have spent on buildings and improvements a sum of 1,613*l.* prior and subsequent to the expiration of the lease of 1831, and the landlord raised no question as to the amount of this expenditure, contending that the effect of the decision in Adams *v.* Dunseath (10 L. R. Ir. 108) was to exclude them from the operation of Section 8, Sub-Section 9, of the Land Act, 1881, by reason of the following covenant in the lease, viz. :—"Whereas "the lands and premises hereinbefore mentioned and hereby demised are not subject to the Ulster Tenant Right "custom or any other usage mentioned in the Landlord and Tenant (Ireland) Act, 1870, and are valued under the "Acts relating to the valuation of rateable property in Ireland, at an annual value of not less than 50*l.*, the said "Joseph O'Neill doth hereby, for himself, his executors, administrators, and assigns, covenant and agree with the "said Austin Irwin Cooper, his heirs and assigns, that at the expiration of said term or other sooner determination "of this demise, or at any other time whatever, he, his executors, administrators, or assigns will not make or shall not "be entitled to make any claims under the said Landlord and Tenant (Ireland) Act for improvements, disturbance, or "other cause whatever, and that these presents and this covenant and agreement on the part of the said Joseph "O'Neill shall be good and sufficient bar to any such claim both at Law and 'in Equity.'"

The Sub-Commission yielded to the landlord's contention as to the effect of this covenant, and, as appears by the Schedule to their Order, gave the landlord credit to the extent of 25*l.* a year for all improvements made by the tenant applicable to such an agricultural holding as the one in question, and fixed the fair rent at 170*l.*

By notice, dated 13th February 1888, the tenant required his case to be re-heard, and on 28th March 1889 the same was re-heard before us. By our judgment of the 8th May 1889, we held that the Sub-Commission was right in its application of the decision in Adams *v.* Dunseath to the covenant in the lease, but in respect of the fine of 800*l.* we considered that we were entitled to take it into account as money paid by the tenant to the landlord for the tenancy, and we fixed the fair rent at 165*l.*

No questions were raised before us as to the rights of the tenant to apply under Section 1 of the Land Law (Ireland) Act, 1887, we having agreed to state the present case for the consideration and decision of Her Majesty's Court of Appeal in Ireland.

The questions for such consideration and decision are :—

1. Whether in fixing the fair rent of this holding the landlord should have been allowed rent on improvements made by the lessee to the extent of 25*l.* a year.

2. Whether in fixing such fair rent the Court was entitled to take into consideration the fine paid by the lessee to the landlord.

ANALYSIS OF INDEX.

LIST of the PRINCIPAL HEADINGS in the following INDEX, with the pages at which they may be found.

PAGE

ACTS OF PARLIAMENT - - - - - - 747

AGREEMENTS AND VOLUNTARY ARRANGEMENTS - - - - - - - - 748

APPEALS AND RE-HEARINGS:

1. *Cases taken from the Sub-Commissions and the County Courts to the Land Commission: Procedure and Results* - 749
2. *Cases taken from the Land Commission to the Court of Appeal* - - - 750
3. *Conclusions and Recommendations of the Committee* - - - - - 751

BUILDINGS - - - - - - - - 769

COSTS:

1. *Applications for Fair Rents* - - 771
2. *Appeals and Re-hearings* - - - 772

COUNTY COURTS:

1. *Jurisdiction and Procedure as regards Valuation and the Fixing of Fair Rents* - - - - - - - 772
2. *Transfer of Cases from the County Courts to the Sub-Commissioners* - - - 773
3. *Suggestions for an amended Practice as regards Valuers, &c.* - - - 773
4. *Reductions of Rent in Cases in the Courts* - - - - - - - 773
5. *Summary and Recommendations by the Committee* - - - - - - 774

DEMESNE LAND - - - - - - - 777

DETERIORATION OF HOLDINGS - - - 777

DRAINAGE - - - - - - - - 780

EXCLUSIONS FROM FAIR RENT PROVISIONS - 781

PAGE

FAIR RENTS:

1. *Generally as to the Circumstances taken into consideration by the Sub-Commissions in fixing Fair Rents, and as to the Working of the System* - - - 783
2. *Explanations respecting the Number of Applications relatively to the Number of Holdings, the Applications withdrawn, &c., and the Number of Fair Rents fixed* - - - - - - - 784
3. *Amount of Fair Rents as compared with the Rents before the Act of* 1881; *Statistics of Reductions* - - - - - 785
4. *Question of the Impregnability of Fair Rent Orders* - - - - - 785
5. *Conclusions and Recommendations of the Committee* - - - - - - 786

FEE FARM RENTS - - - - - - - 786

FREE SALE - - - - - - - - 793

FUTURE TENANCIES - - - - - - 793

IMPROVEMENTS:

1. *Expenditure upon Improvements on Holdings in Ireland mainly by the Tenants* - - - - - - - 802
2. *Conditions necessary in order that Tenants may claim for Improvements and may establish their Right to any Allowance in respect thereof when Fair Rents are being fixed* - - - - - - 802
3. *Rules and Procedure generally of the Sub-Commissions as regards the Valuation of Improvements and the question of Allowance to the Landlord or Tenant, respectively* - - - - - - 803
4. *Statutory Provisions and Legal Decisions by which the Sub-Commissioners are guided* - - - - - - 805
5. *Case of Adams* v. *Dunseath; great importance thereof* - - - - - 805
6. *Difficulties of proof in the case of Tenants rather than of Landlords* - - - 807

PAGE

Improvements—continued.

7. *Presumption as to improvements in the absence of Evidence; question whether the Presumption should not always be in favour of the Tenant, subject to proof by the Landlord* - - - - - 808
8. *Suggestions as to the Allowance for Improvements being publicly recorded* - 808
9. *Varying character and value of Tenants' Improvements; Expediency of the fullest encouragement in the matter* - 809
10. *Conclusions and Recommendations of the Committee* - - - - - - 810

Judgments and Legal Decisions - - 812

Land Commission (Central Department) - 813

Landlords - - - - - - - - - 814

Leases - - - - - - - - - 814

Limited Owners - - - - - - - 815

Pasture Holdings:

1. *Exclusion of Holdings wholly or partly under Pasture from the Fair Rent Provisions of the Land Acts; several cases in the Courts* - - - - - 822
2. *Recommendations for the removal or modification of the existing Restrictions* - - - - - - - 822

Pre-emption Right of Landlord - - 823

Prices - - - - - - - - - - 824

Reclamation of Waste Land - - 826

Redemption of Rent Act - - - - - 826

Specified Value and True Value:

1. *Present Practice in fixing the Specified Value and the True Value* - - 831
2. *Suggestions for an amended System* - 831

Statutory Term:

1. *Suggestion for the Reduction of the Statutory Term of Fifteen Years* - 832
2. *Exceptions taken to the proposed Reduction* - - - - - - - - 832
3. *Legal Operation of the Statutory Term and Legal Position of the Tenant at the end thereof* - - - - - - 832
4. *Question of Revision and Re-adjustment of Rents on the expiration of the Term; Facilities suggested on this Point* - - 833
5. *Conclusions and Recommendations of the Committee* - - - - - - - 834

PAGE

Sub Commissions:

1. *Constitution and Jurisdiction of the several Sub-Commissions* - - - 835
2. *Procedure* - - - - - - - - 835
3. *Local Sittings; Removal from one District to another* - - - - - 836
4. *Question of amendment on several Points* 836

Sub-division of Holdings - - - - - 836

Sub-Letting:

1. *Statutory Provisions and Restrictions with regard to Exclusion from the Fair Rent Clauses of the Land Acts; extent of such Exclusion* - - - - - 837
2. *Question of Removal or Modification of Restrictions, and of the adoption of various Amendments* - - - - 837
3. *Conclusions of the Committee* - - 838

Tenant Right and Occupation Interest:

1. *As to the Value thereof, and the Prices realised on Sale* - - - - - 839
2. *As to the Question of Allowance in Valuing for Fair Rents* - - - 839
3. *Summary and Recommendations by the Committee* - - - - - - - 840

Town Parks:

1. *Statutory Provisions and Legal Decisions upon the Question as to what constitutes a Town Park, and thus entails Exclusion from the Fair Rent Clauses of the Land Acts* - - - - - - 841
2. *Question considered as to the Expediency or otherwise of the Exclusion of Town Parks; conflicting Evidence on the subject* - - - - - - - 842
3. *Summary and Recommendation by the Committee* - - - - - - 842

Turbary - - - - - - - - - 843

Ulster - - - - - - - - - 843

Valuers and Valuation:

1. *Generally as to the Practice in connection with the Sub-Commission Courts* - 844
2. *Explanations respecting the Practice in connection with the County Courts* - 845
3. *Conclusions of the Committee* - 846

INDEX.

[*N.B.*—In this Index the Figures following the Names of the Witnesses, and those in the Analysis of Evidence of each Witness, refer to the Questions in the Evidence: the Figures following *App.* refer to the Pages in the Appendix; and the Numerals following *Rep.* to the Pages in the Report and Proceedings of the Committee.]

A.

ABATEMENTS OF RENT. Inducement to many tenants to keep out of Court by reason of temporary abatements of rent, *Bailey* 1395, 1396; *Doyle* 2922, 2923; *Bayly* 4181, 4182——Exclusion of evidence as regards temporary abatements by landlords when fair rents were being fixed, *Bailey* 2053–2055——Concurrence in the view that temporary abatements are one of the chief causes preventing tenants from applying to have fair rents fixed, *Cunningham* 4740–4744; *O'Keeffe* 6142 *et seq.*

Information respecting the farms held by witness and the abatements allowed to his tenants, *Heard* 9642–9667; *Neligan* 11713–11722——Rule, on the properties of which witness is agent, not to give reductions to tenants who have judicial rents; reductions varying from five to twenty-five per cent. given to those who have not got judicial rents, *Garvey* 11967–11995. 12009–12012. 12133–12140.

See also *AGREEMENTS AND VOLUNTARY ARRANGEMENTS. FAIR RENTS.*

ACTS OF PARLIAMENT:

Enumeration of the exceptional difficulties arising from the interdependence of the various Land Acts; special reference to the terms "holding" and "present tenancy," *FitzGibbon* 2969–2976. 3037, 3038——Incorporation of the Act of 1881 with the Act of 1870, by the 57th section of the former Act; practical effect thereof that the two statutes must be read and construed as one, *ib.* 2993–2995.

Decided opinion that any Act dealing with the land question should be made so clear as not to admit of any misinterpretation on the part of those who have to administer it, *MacAfee* 5783–5803——Statement that fewer legal questions arise for consideration now than formerly, most of the points having been settled, and that the Acts are now working more smoothly, *Doyle* 6930 *et seq.*

Necessity for consolidating the statutes from 1860 to the present time, and of making their definitions more intelligible, *Greer* 8459–8462——Replacement of the Act of 1870 by the Act of 1881, it being necessary to follow the checks and limitations of the former Act as regards improvements, &c., in the administration of the latter, *Shaw* 8930–8936.

Review by the Committee of the provisions and operation of the Act of 1870, the most important clause, as regards protection of the tenant's tenure, being that which provided compensation for disturbance in case of capricious eviction, *Rep.* iii.—— Several important exclusions from the operation of the Act of 1870, such as town parks, demesne lands, grazing lettings, &c., *ib.*

Important effect as regards the Act of 1881 through the definitions in the Act of 1870 being incorporated therein; special reference hereon to tenants' claims in respect of improvements, and to the several exclusions from such claims, *Rep.* iii. vii. ix–xiii.

Grounds upon which the Committee consider that opportunity should be taken as soon as feasible of consolidating the Irish Land Laws in one consistent and intelligible Act, *Rep.* xxii.

See also *the Headings generally throughout the Index.*

Adams v. *Dunseath.* See *IMPROVEMENTS* 5. 10.

Agistment Lettings. Particulars respecting the exclusion (from the fair rent system) of lettings where no tenancy is created, such as agistment lettings and conacre lettings, *Bailey* 871–880.

Report, 1894—*continued.*

AGREEMENTS AND VOLUNTARY ARRANGEMENTS (LANDLORD AND TENANT):

Suggestions in detail for facilitating agreements and voluntary arrangements on the expiration of the statutory term, *Bailey* 1295-1299. 1650–1652. 1897–1902. 2514, 2515 ——Frequent cases before witness' Court in which the rents had been fixed under agreements that had not been registered; great alteration in many instances, *ib.* 2516–2522.

Suggestion that the expense in fixing fair rents may be reduced by facilitating agreement between the landlord and the tenant free of cost, at the instance of the Court valuer; objection in such case to an appeal on value, *Bayly* 3632–3635——Explanations respecting the proposals of witness as compared with those of Mr. Bailey for facilitating voluntary settlement of the rent between landlord and tenant without legal intervention, that is, unless they failed to agree; belief that in numerous cases this arrangement would be accepted by both parties, *ib.* 3751–3766.

General concurrence of witness with Mr. Bailey's proposal as to fixing fair rents; suggestion, however, that the first procedure might be left to the landlord and tenant in all cases, with an appeal within a month to a full Sub-Commission, *Cunningham* 4601–4606. 4750 *et seq.* 4868-4875——Numerous cases in which agreements between landlords and tenants have not been registered, and when re-valued the rents have been reduced, *ib.* 4605, 4606.

No doubt that those tenants who had their rents fixed between 1882 and 1887 by agreement out of Court, and had them filed, are now paying about double the fair rent; urgent necessity of the retrospective operation of the shortened statutory term so as to allow of an immediate revision of these rents, *O'Keeffe* 6110–6141. 6189-6193. 6265 *et seq.* 6326-6333. 6554-6574——Grounds for the opinion that the rents fixed by agreement out of Court were abnormally high, and would now be unfair; uselessness of comparison by averages and percentages of reductions made in and out of Court, *ib.* 6715 *et seq.* 6797. 6868–6873.

Recommendation that in non-contentious cases the rent might be re-fixed by a valuation on the land, leaving the landlord or tenant to raise any question afterwards in Court, *Doyle* 6924–6929. 7618 *et seq.*

Reference to the number of agreements made during the sitting of the Donoughmore Committee in 1882, and signed by tenants in ignorance of the covenants of such agreements, *Greer* 8043, 8044. 8131-8134. 8177, 8178 —— Desirability of settling a greater number of cases out of Court, *ib.* 8164–8166.

Examination as to the grounds for the opinion that a great number of agreements had been signed by tenants in ignorance of their provisions; admission that this opinion was founded to some extent on the untested statements of the tenants, *Greer* 8347–8358. 8643-8653—— Detailed examination showing that although 12,475 agreements were fixed out of Court during the sitting of the Donoughmore Committee, there were considerably more during the following year, and that the numbers have been subject to great variation, *ib.* 8368–8381.

Evidence showing that where agreements as to fixed rents had not been filed such cases were often brought before the Kerry County Court and larger reductions made than had been given under such agreements, *Shaw* 9023–9027. 9189-9191 —— Discussion as to the percentage of reduction in cases of rents mutually agreed upon as compared with those fixed in Court, *ib.* 9061–9063. 9065–9069. 9192–9195 —— Examination as to cases in which rents are fixed by agreement; when brought into Court such rents are mostly reduced, *Heard* 9363–9370. 9451–9459. 9580–9583.

Inability of witness to say whether the rents fixed by agreement out of Court in the early days of the Land Acts were higher than the judicial rents then fixed; probability that if the judicial rents had come up for revision in 1885 to 1887 they would have been reduced as much as the others were, *Bewley* 10493–10502 —— Doubt as to the Land Commission being able to give any information, additional to that in the annual Reports, respecting the difference in the percentage and reductions on former rents in the two cases of rents fixed by agreement and rents judicially determined, *ib.* 10503–10507—— No doubt that the rents fixed by agreements and declarations a good many years ago are higher than the judicial rents that would now be fixed by a Sub-Commission, *ib.* 11132–11138.

Evidence to the effect that some agreements out of Court were made on the estates with which witness is connected, at the request of the tenants, but that all rents are now settled in Court; very small difference between the rentals under agreements and the judicial rentals, *Garvey* 11923–11930. 12147–12153——Acceptance by the tenants, voluntarily, of witness' valuation, in the great majority of cases settled by agreement out of Court, *Barnes* 12948–12953.

Table, handed in by Mr. W. F. Bailey, containing examples of cases in the counties of Down, Armagh, Monaghan, and Cavan, where fair rents have been recently fixed by the Sub-Commission Court in which settlements had been agreed to between the parties after the passing of the Land Act of 1881 reducing the old rents, *App.* 693.

Table,

Report, 1894—*continued.*

AGREEMENTS AND VOLUNTARY ARRANGEMENTS, &c.—continued.

Table, handed in by Mr. Doyle, of cases in the county of Cork and other counties in which judicial rents were fixed after agreements had been signed but not filed in the Land Commission Office, *App.* 694.

Return, according to provinces and counties, showing the percentage of reduction in judicial rents fixed by agreement, *App.* 741.

Total of 121,902 fair rents fixed by agreements between landlords and tenants since the Act of 1881, *Rep.* iv.

See also *Arbitration. Donoughmore Committee. FAIR RENTS. STATUTORY TERM.*

Agricultural Department (*Land Commission*). Establishment of the Agricultural Department of the Commission, just after the passing of the Act of 1877, for the temporary adjustment of rents, *Bewley* 11088–11090.

Agricultural Holdings (*Generally*). Approval of the policy of bringing agricultural holdings generally within the Acts, *Bailey* 1377–1379 ——Limited difficulty in determining whether a holding is non-agricultural; reference to the legal Sub-Commissioner in doubtful cases, *Bayly* 4190–4197.

Large number of agricultural holdings; total of 552,349 according to a recent Parliamentary Paper, *Rep.* iv.

Antrim. Higher rents paid by sub-tenants in Antrim owing to the houses being better than in other counties, *Greer* 8246–8257.

APPEALS AND RE-HEARINGS:

1. *Cases taken from the Sub-Commissions and the County Courts to the Land Commission; Procedure and Results.*
2. *Cases taken from the Land Commission to the Court of Appeal.*
3. *Conclusions and Recommendations of the Committee.*

1. *Cases taken from the Sub-Commissions and the County Courts to the Land Commission; Procedure and Results:*

Right of appeal to the Commissioners, within two months, from the decisions of the Sub-Commissions; conditions attached thereto, *Fitzgerald* 97–105——Arrangements as to the local sitting of the Commissioners on appeal cases, witness and Mr. Justice Bewley always sitting, with a third Commissioner, unless unavoidably absent, *ib.* 109–114——Impracticability of the Commissioners inspecting in appeal cases, *ib.* 145, 146.

Summary of the procedure before the Commissioners and character of the oral and documentary evidence; decision announced in open Court, *Fitzgerald* 147–177—— Evidence heard by the Commissioners on appeals from the County Courts when there is no cause book; instances of no orders of the Courts being forthcoming, *ib.* 210 —— Statement to the effect that appeals are not refused on mixed questions, *ib.* 397–399 ——Occurrence of appeals in some twenty or twenty-five per cent. of the cases, these now coming about equally from landlords and tenants, *ib.* 523–525.

Effect of appeals from the Sub-Courts to the Land Commission, that since August 1881 the rents as fixed by the former have been increased 0·2 per cent. over the whole period, *Bailey* 1415–1419. 1646–1649——Ample evidence before the Chief Commissioners over and above the valuers' report, in cases of appeal, *ib.* 1843–1845. 2161–2171 ——Concurrence in some exceptions taken to the procedure in connection with appeals, *Bayly* 4329–4338.

Expediency of making the decision of the Sub-Commission final in all questions of value and of restricting appeals to questions of law, *Greer* 8039–8042 —— Attention of witness called to the large number of appeals that have been made; they are more numerous than he had supposed, *Heard* 9592–9602.

Evidence to the effect that witness' present duty is to preside over the sittings of the Land Commission, held all over Ireland, for re-hearings and appeals; also, to sit with Mr. Commissioner Fitzgerald in Dublin to hear motions in fair rent cases, *Bewley* 10080–10083——Statement that since his appointment in 1890 witness has delivered judgment in 4,540 fully heard-out cases, in 991 of which legal questions arose; no doubt that valuation is the most important element for decision in the majority of appeal cases, *ib.* 10084–10095——Various kinds of motions on which witness makes orders, some of them involving decisions on important points of law, *ib.* 10090–10093.

Detailed account of the procedure adopted in the ordinary cases of re-hearing on appeal from the Sub-Commission; great advantage of the appellate jurisdiction over the Sub-Commissioners, it having an important steadying effect on them, *Bewley* 10106–10133——Submission of a table, prepared by the Registrar, showing the cases in which there has been a substantial increase or decrease in the amount of the rent; also, a table of the increases in the true values, *ib.* 10119–10133——Refusal of the Land Commission

Report, 1894—*continued.*

APPEALS AND RE-HEARINGS—continued.

1. *Cases taken from the Sub-Commissions and the County Courts, &c.*—continued.

Court, in Judge O'Hagan and Mr. Justice Litton's time, to grant leave to appeal after they had affirmed the decision of a Sub-Commission; practice of witness and Mr. Fitzgerald, on the contrary, to allow an appeal whenever there is an arguable question in the case, *Bewley* 10134.

Return showing some cases in which the true value as fixed by Sub-Commissions or Civil Bill Courts has been substantially increased on appeal to the Land Commission, *App.* 695.

Further Return showing a number of cases in which the rents fixed by Sub-Commission or Civil Bill Courts have been altered to a substantial extent on appeal to the Commission, *App.* 696–698.

Return of appeals by counties, provinces, and all Ireland from the commencement of proceedings on 22nd August 1881, up to 31st March 1894, distinguishing between landlords' appeals and tenants' appeals, and showing to what amount the rent fixed by the Court below was increased or was reduced by the Land Commission, *App.* 728–735.

Return for the period from 22nd August 1881 to 31st March 1894 of all cases in which the Sub-Commission Court, or Civil Bill Court, made an order on an application to fix the true value of a tenancy under Section 1, Sub-section 3, of the Act of 1881, and the Land Commission re-heard the application on appeal, *App.* 736, 737.

2. *Cases taken from the Land Commission to the Court of Appeal:*

System of appeal from the Land Commission to the Court of Appeal in Ireland, there being no further appeal to the House of Lords; power also to have a case stated for the Court upon any question of law, *Fitzgerald* 178–193.

Very close and minute inquiry on the part of the Court of Appeal in Land Act cases; illustration in the recent case of Martin *v.* Lord Annesley, *Bailey* 1815–1823—— Explanation of the principles by which the Court of Appeal is guided in certain cases in fixing a particular user upon the holding, *ib.* 2314–2318.

Particulars of the constitution of the Court of Appeal; explanation that the presence of three Judges is absolutely necessary at any final appeal, but that in a very important case (Adams *v.* Dunseath) there were seven present, *FitzGibbon* 2940–2943——Definition of the difference between an appeal and a re-hearing, *ib.* 2940——Information as to the procedure of the Court in respect of questions of law and mixed questions of fact and law, the only two forms of Land Commission appeals; exclusion from the Court of all cases of "fair rent" or value, *ib.* 2944, 2945.

Explanation in regard to the data by which cases of appeal are decided; admissibility of the papers prepared by the Sub-Commissioners as evidence in land proceedings, *FitzGibbon* 2947, 2948. 3142–3144——Examination as to the number and classification of cases that have come before the Court; judicial statistics of all cases from 1882 to 1893, inclusive, handed in, *ib.* 2954–2968. 3034–3036—— Explanation of the discrepancy between the number of cases of appeal on the list handed in by witness and those on the Registrar's list; the 202 cases on the list prepared by witness came from the Land Commission Court only, *ib.* 3126–3135. 3146–3150——Further reference to the constitution of the Court of Appeal, there having been fourteen individual Judges, *ib.* 3148.

Impossibility for the Court of Appeal to lay down general principles for the decision of land cases, owing to the variation of the facts of each individual case; instance in the case of Stewart *v.* Davidson, *FitzGibbon* 3221–3223—— Further and complete classified list of the 202 cases previously mentioned, handed in, *ib.* 3301–3306.

Question as to whether there is any available means of arriving at the dicta of the Judges other than that of reading the Reports; belief that this is the only practicable way, *FitzGibbon* 3307–3309—— Inability of the Court of Appeal to alter a decision of the Land Commission on a question of fact, although they may consider such conclusion a wrong one, provided it was proved by the Lower Court to be within its jurisdiction; reference hereon to the case of Bruce *v.* Steen, *ib.* 3452.

Accuracy of Lord Justice FitzGibbon's list of appeals, *Bewley* 10139——Statement that since 1890 there have been 113 appeals from the Land Commission Court and Judicial Commissioners sitting alone, and that of the eighty-seven decisions for which witness was responsible, sixty were affirmed and twenty-seven reversed by the Court of Appeal, the latter including some of his most important cases, *ib.* 10140–10143—— Sketch of the present method of procedure in the Court of Appeal in determining questions of value; statement that witness does not act on the principle of Judge Shaw and disregard the landlord's and tenant's evidence as to value, *ib.* 10510–10559, 10633–10640.

Further

APPEALS AND RE-HEARINGS—continued.

2. *Cases taken from the Land Commission to the Court of Appeal*—continued.

Further information as to the number of cases in which appeals have been made from witness' decisions; inclusion of some very important cases in the eighteen decisions that were reversed in favour of the tenants, *Bewley* 10658–10674——Adherence of witness to his opinion that great injustice would be done in individual cases unless the right of appeal be retained, *ib.* 10833–10844. 10918.

Decided opinion that the right of appeal from all Courts of First Instance should be preserved, *Neligan* 11454, 11455. 11625–11627——Approval of the right of appeal being maintained, both as regards value and as regards law; probability that the general result of the appeals is the confirmation of the rents fixed by the Court below, *Garvey* 11942, 11943. 12499–12529.

Returns containing particulars in connection with appeals and cases stated from the Land Commissions, *App.* 678, 679.

List of all decisions of the Court of Appeal noted by Lord Justice FitzGibbon, showing in each case the landlord and tenant, the subject of appeal, and the result, *App.* 688. 692.

List of appeals and cases stated from decisions of the Land Commission to which Mr. Justice Bewley was a party between the 1st January 1891 and the 31st May 1894, showing in each case whether the decision was affirmed or reversed by the Court of Appeal, *App.* 726, 727.

3. *Conclusions and Recommendations of the Committee:*

Total of 42,621 cases since the Act of 1881 in which there were appeals and applications for re-hearing, nearly one-half of which were withdrawn, *Rep.* v——Reference to the system of re-hearing on all questions of value as one of the causes which deters tenants from making applications to have fair rents fixed, *ib.* vi.

Very small total increase (only 2,383*l.*) in cases of re-hearing or appeal from the Sub-Commissions and from the County Courts, *Rep.* vi.

Conclusion that the system entails grievous delays, protracts uncertainty, imposes heavy costs (oppressive to a humble class of suitors), and necessitates expenditure out of all proportion to the practical result, *Rep.* vi.

Vast expenditure in order to subject the decision of a Court, two of the three members of which are agricultural experts, who themselves inspect the holding, to be reviewed by another Court, no member of which inspects the holding or need be an agricultural expert, though the question to be determined is one of the value of land, *Rep.* vi.

Opinion that where the valuation of a holding does not exceed 20*l.*, and where the Judgment of the Sub-Commission on questions of value is unanimous, there should be no re-hearing by the Land Commission on any question of value, *Rep.* vi.

See also *COSTS*, 2. *IMPROVEMENTS*, 5. *JUDGMENTS AND LEGAL DECISIONS.*

Arbitration. Explanation that under the Redemption of Rent Act there are no special provisions as to arbitration; much greater cost of purchase by arbitration than under the Act, *Fitzgerald* 308–314——Objection of witness to rents being fixed by arbitration; preference for a full hearing of the case in open Court, *Garvey* 12398–12412. 12529–12539.

Total of only thirty-seven fair rents fixed by arbitration since the Act of 1881, *Rep.* iv——Average reduction of 30·7 per cent. in these cases, *ib.*——Absence of any case during the last four years, Section 40 of the Act being practically inoperative, *ib.*

Arrears. Operation of arrears in preventing applications for fixed rents, *Bailey* 1289–1294——Liability of the tenant to ejectment if he gets into arrear after the fair rent has been fixed, *ib.* 1642–1645——Provisions in the Acts of 1881 and 1887 under which tenants in arrear may obtain a stay of proceedings pending application for a judicial rent, *ib.* 2135–2140——Large number of tenants who have got into fresh arrears since the wiping off of old arrears under the Act of 1882, *ib.* 2499–2501.

Decided effect of arrears in deterring tenants from going into Court, *Bayly* 4039–4041· 4181, 4182——Desirability of the Court having power, in fixing a fair rent, to deal with arrears, as in Scotland, and to take cognisance of turbary where it exists anywhere upon an estate, *Cunningham* 4747–4749.

Doubt as to the advisability of giving the Court power to protect the present tenant by dealing with arrears, as in Scotland; sympathy of witness, however, with a tenant who is doing his best to pay an impossible rent, *MacAfee* 5805–5813.

Decision of the Committee that the question of arrears is not within the reference under which the Committee sits, *Rep.* xxvii.

Assistant-Commissioners. See *Sub-Commission.*

B.

Bailey, W. F. (Analysis of his Evidence.)—Considerable experience of witness in various counties in Ireland as a legal Assistant Land Commissioner since November 1887; he was previously Secretary to the Royal Commission on Irish Public Works, 647-656.

Delegation of all the powers of the Central Land Commission to each Sub-Commission sitting locally, the orders of the latter being final, subject to appeal, 657, 658. 729-735——Summary of the procedure in the Sub-Commission Courts, evidence being taken on disputed questions of area, upon changes in the rent, drainage or other changes in the holding, rates and taxes, and such other matters as affect the annual value, 659-676 —— Evidence taken by the Court from each party as regards improvements and their value with reference to the allowance to be made on this score to the tenant in fixing the fair rent, 668-676.

Decision practically by witness, as legal Commissioner, of all questions of law, the two lay Assistant Commissioners accepting his ruling on legal points, 677-680. 685-687. 708, 709——Completion of the case after the hearing in Court, by the two lay Sub-Commissioners visiting the holding, inspecting the improvements, buildings, &c., and making separate or independent valuations, field by field, the boundaries being marked on the Ordnance Sheet, 681-702——Great importance attached to the map, showing in each case the boundaries of the holding, 696-702.

Subsequent consultation between the legal Sub-Commissioners and his colleagues, when the whole case is carefully gone into before an order is made fixing the rent, 703-709 ——Considerable difficulty upon the question of turbary, the Sub-Commissioners having no jurisdiction where the landlord separates the turbary from the holding, 709-716—— Careful consideration necessary as regards the incidence of taxation upon the landlord and occupier, respectively; reference more especially to the county cess, 717-728.

Result of witness' experience that he considers the present system of fixing judicial rents in Ireland to be as fair as anything that can be devised, 736——Special importance attached to the personal visitation and valuation of each holding by the two lay Sub-Commissioners, 736-739.

Explanatory statement with reference to the provisions of the 8th section (Sub-section 9) of the Act of 1881 as regards allowance for tenant's improvements when not previously compensated for; particulars hereon of the decisions of the Court of Appeal upon the five questions of law raised in the case of Adams *v.* Dunseath, 740. 748-867.

Unanimous decision of the Court of Appeal (Adams *v.* Dunseath) that the meaning to be attached to the word "improvements" was that given to it by the Act of 1870; 754-761——Decision in the Court of Appeal upon the question of improvements made by a tenant or by his "predecessors in title"; judgment of the majority (four to three) that a tenant was not debarred from his claim because of a break in the tenancy, 762-773.

Importance of the Judgment of the Court of Appeal (Adams *v.* Dunseath) as to certain restrictions in Section 4 of the Act of 1870 applying to a tenant's improvements when a fair rent was being fixed; dissent of Lord Chancellor Law from this decision, 774-801. 834——Decision by Mr. Justice Bewley in the case of Keran *v.* Mollan excluding fee-farm grantees from claiming for improvements under any circumstances, this being under the Redemption of Rent Act, and overruling a previous decision by witness to a contrary effect, 802-829.

Unanimous decision of the Court of Appeal that the enjoyment of improvements under a lease is not compensation, 835-841——Judgment of the Court, by a majority of one (Lord Justice FitzGibbon), to the effect that improvements made before a lease were captured by the lease and belonged to the landlord; modification of the foregoing Judgment by the decision in the case of Walsh *v.* Limerick, 842-857.

Proviso in the Act of 1870 that in cases not subject to the Ulster custom the presumption as regards improvements shall be in favour of the tenant; numerous and wide exceptions to this provision, so that the presumption is practically with the landlord, 858-867——Presumption in favour of the tenant in all cases under the Ulster custom, 866.

Examination in detail explanatory of the various exclusions from the Land Acts, a very large number of occupiers being thereby deprived of the benefits of the fair rent system, 868 *et seq.*——Particulars respecting the exclusion of lettings where no tenancy is created, such as agistment lettings and conacre lettings, 871-880——Explanation respecting the exclusion of the purchaser of a tenancy where the conditions prescribed by the 1st section of the Act of 1881 have not been complied with, 881-888.

Bailey, W. F. (Analysis of his Evidence)—*continued.*

Information as regards the exclusion of future tenancies, with reference more especially to the termination of present tenancies upon the death of limited owners, 889–925—— Termination also of present tenancies where the middleman is ejected for non-payment of rent, 926–930——Statement as to tenancies created by a mortgagor, after the date of the mortgage, not being binding on the mortgagee, 931–935.

Consideration of the facilities for contracting out of the Act of 1881, and for the creation thereby of future tenancies; importance hereon of the decisions of the Court of Appeal in the cases of Conroy *v.* Drogheda and Torrens *v.* Cooke, 936–978—— Information respecting exclusions where the holding is partly agricultural and partly pastoral, 980–984——Exclusion of demesne lands; questions decided in connection with undemesning, 985–993.

Specific exclusion from the Land Acts in the case of home farms, 994–1005—— Examination with reference to town parks and the legal provisions and definitions which determine the question of their exclusion from the Acts; conditions under which a town park may be brought within the Act of 1881 if used as an ordinary agricultural farm, 1006–1024.

Exclusion of holdings if let to be used mainly or wholly for purposes of pasture; distinction between holdings above and below 50*l.* valuation, respectively, 1025–1041 ——Explanations respecting various other exclusions from the fair-rent provisions of the Act of 1881, as in cases of sub-letting, "triviality," exclusions by agreement, &c., 1042–1103.

Particulars respecting the case of Gault *v.* Wilson, the holding having been occupied under a fee-farm grant at a rent of 236*l.*, whilst Mr. Gault, as tenant, paid a fine of 1,315*l.*, or twenty-five years' purchase of the difference between the old rent and the new, 1104–1139——Decision of witness in the foregoing case that the fine should be taken into account in fixing a fair rent; grounds upon which this decision was overruled on appeal, the rent fixed by witness having been raised, 1109–1138.

Explanations in connection with the case of Mairs *v.* Leckie, in which witness declined to put any rent upon the expenditure of the tenant on improvements, and reduced the rent from 18*l.* to 11*l.*; reversal of this decision by Mr. Justice Bewley, the old rent having been revived, 1140–1168——Information with regard to the case of Mr. Kennedy (near Ballymena), in which were involved several sub-lettings; fair rent fixed by witness, though this decision was overruled on the ground of non-triviality, 1169–1186.

Further explanations in connection with the case of Adams *v.* Dunseath and the effect of the decision in giving to the landlord the whole of the increased letting value consequent upon expenditure by the tenant upon improvements, 1187–1207——Statement with further reference to the state of the law in Ulster and out of Ulster, respectively, as regards the presumption being in favour of the landlord or of the tenant in the matter of improvements; hardship in many cases through the tenants being unable to prove their improvements, 1208–1232.

Conclusion that in the great majority of cases throughout Ireland the improvements are made by the tenants; question hereon whether the presumption to this effect should not be made general, subject to the landlords proving their own improvements, 1211–1232—— Omission of tenants, as a rule, to keep records of their improvements, this not applying to landlords; acceptance, however, of parol evidence as to improvements, 1218–1226——Belief that there is no presumption in law in favour of the reclamation of waste lands being made by the tenant, 1227–1230.

Exclusion, doubtless, of a large number of cases of sub-letting on the question of triviality, 1233–1236——Opinion as regards town parks that the cases to be excluded should be those where the lands are not really let for agricultural purposes, 1237–1244.

[Second Examination.]—Reference to the definition of the Ulster custom by Mr. Blake (chairman of the County of Fermanagh); five leading features of the custom, 1245–1248——Definition given to the custom by the present Master of the Rolls in Ireland; several essentials according to this definition, 1248.

Different usages on different estates in Ulster, the custom not being universal throughout the province, and the onus of proof as to the existence of the custom being with the tenant, 1249, 1250—— Several advantages of Ulster custom-holding tenants under the Act of 1881 as compared with other tenants; much better position of the former class as regards claims for improvements, 1251–1254.

Outline of the action of the Sub-Commissioners in dealing with questions of turbary; numerous cases in which they have nothing to do with turbary in fixing the fair rent, the landlords having power in such cases to enforce unduly large payments for turbary; 1255–1262——Reference to the decision in the case of Flannery *v.* Nolan as excluding a tenant from the fair-rent system when he takes a lease in which there are three sub-

Report, 1894—*continued.*

Bailey, W. F. (Analysis of his Evidence)—*continued.*

tenancies conveyed, 1263–1265——Frequency of inaccurate and inadequate claims for improvements being made on the schedules, the tenants being under much disadvantage as regards any ratification thereof, 1266–1278.

Schedule of costs laid down by the Land Commission in connection with applications by tenants; regulation also of the fees for professional valuers, 1279–1283——Great complaints some years ago as to the delay in hearing cases; prompt hearing of late, 1284—— Considerable number of fair-rent cases still coming in, 1285——Steps taken to sit in places as near as possible to the holdings of the parties, 1286–1288.

Operation of arrears in preventing applications for fixed rents, 1289–1294——Suggestions for a modification of the procedure in small non-contentious cases and for dispensing with the preliminary hearing, but not in the larger or contentious cases, 1295, 1296. 1650–1652——Opinion that in non-contentious cases an appeal on questions of value might be withheld, and that the valuation might be made by a single valuer, 1297–1299. 1650, 1651.

Approval of the amount allowed off the rent in respect of improvements being set forth, 1300–1304——Further information respecting the case of Mr. Andrew Kennedy of Ballymena, in which, though it was decided that 34*l.* was a fair rent, Mr. Kennedy was ruled out of Court on the ground that the sub-letting was trivial, 1305–1319.

Belief as to the legal Sub-Commissioners having all had substantial practice, 1320, 1321——Qualfications of the several lay Sub-Commissioners as regards practical acquaintance with land and its value, 1322–1336——Explanations respecting the procedure of the lay Sub-Commissioners when they sit, in pairs, without a legal chairman; determination by them of the value and the rent, after inspection of the land, questions of law being reserved for the chairman, 1337–1353. 1567–1571.

Rule of the lay Sub-Commissioners to take the law from the chairman, though they sometimes dissent from him, 1347–1353——Practice as to the chairman, though probably not conversant with agriculture, and though he has not inspected the holding, deciding between the two lay Sub-Commissioners when they cannot agree as to the rent to be fixed, 1354–1372. 1567–1571.

Rough estimate of about 250,000 holdings upon which fair rents have not been fixed, a great many of these being specifically excepted from the Land Acts, or being excluded therefrom by subsequent judicial interpretation in the working of the Acts; other causes of non-application in these cases, 1373–1389. 1653–1660——Approval of the policy of bringing agricultural holdings generally within the Acts, 1377–1379——Considerable number of cases withdrawn by the tenants for various causes, such as threats of eviction, fear of appeal, &c., 1390–1394——Inducement to many tenants to keep out of Court by reason of temporary abatements of rent, 1395, 1396.

Practical effect of the decision in the case of Adams *v.* Dunseath that, as regards the costs of each application, the landlord and the tenant each pays his own, though in almost every case the tenant succeeds in obtaining a reduction of rent, 1397–1405 ——Numerous instances in which the landlord as well as the tenant appeals, each paying his own costs in such cases, 1406–1414. 1420, 1421——Effect of appeals from the Sub-Courts to the Land Commission that since August 1881 the rents as fixed by the former have been increased 0·2 per cent. over the whole period, 1415–1419. 1646–1649.

Explanations in connection with the pre-emption right of the landlord (outside Ulster), and his power to buy at the "true value," when a tenant wishes to sell; way in which the true value of the tenancy is arrived at in such cases, 1422–1446—— Exemption of tenants holding under the Ulster custom from the obligations under the Land Act as to selling to the landlords at the true value; question considered hereon as to the expediency of all Irish tenants being placed upon the same footing in regard to free sale, &c., 1428–1455.

Presumption under the Ulster custom, but not outside the custom, that all improvements are made by the tenant, 1456–1458——Rule throughout Ireland that improvements are made by the tenants, though outside Ulster the latter are frequently at a great disadvantage through not having records on the subject, 1459–1470——General difficulty on the part of landlords in proving maintenance of improvements, 1461.

Great variety of circumstances taken into consideration in fixing a fair rent; due regard had to the probable surplus available for subsistence after payment of the cost of production, 1471–1485. 1567–1571——Consideration of certain provisions in the Acts of 1870 and 1881 upon the subject of improvements in connection with the question of allowance to the tenant (in the rent) in respect thereof; that is, when he has not been already paid or compensated therefor by the landlord, 1486–1531——Effect of the decision in the case of Adams *v.* Dunseath further adverted to as regards allowance for improvements, 1489. 1494. 1498. 1531.

Separate valuation of the soil and of the buildings, the fair letting value of the latter being added to the rent when they are provided by the landlord, but not when they are provided

Report, 1894—*continued.*

Bailey, W. F. (Analysis of his Evidence)—*continued.*

provided by the tenant, 1499–1506——Proof required as to the tenant having made the fences and roads, in which case no addition is made to the rent in respect of them 1507–1512——Proof also required before witness in Court as to the ownership of improvements generally by the tenant before they are inspected by the lay Commissioners; frequent difficulty of legal proof in the case of reclamations, &c., 1532–1554.

Reference to the decision in the case of Archer *v.* Caledon as the accepted definition of what constitutes a town park; explanation hereon as to the definition of accommodation land adjacent to towns, 1555–1566——Exclusion of the tenant from allowance for improvements if he has not set them forth in the notice or if he has supplied inaccurate particulars; great difficulty under which he labours on this score, 1572–1584——Disallowance of claim for tenant's improvements if they are not suitable to the holding or are in excess of what is required, even though they increase the letting value; reference hereon to the decision in the case of Robb *v.* The Marquis of Downshire 1585–1590.

Great variation in the Ulster usages in different districts, it being necessary to prove their existence and their force in the case of each holding, 1591–1600——Several ways in which changed interpretations of the Land Acts and contradictory decisions of the Judges have operated disadvantageously to the tenants, as in the case of town parks, accommodation land, &c., 1600–1622.

Difficulty in cases where fair rents have been fixed in places not regarded as towns if, several years hence, and in consequence of recent decisions, these places were regarded as towns, 1623–1627——Considerable difficulty also on the score of exemptions in respect of divided leaseholds and future tenancies, 1628–1634.

Reference to the power of landlords to resume possession of land in town parks, the tenants not having any provisions of the Act of 1881 in their favour, 1635–1639——Condition under which exclusion from the provisions as to fair rents applies to mill farms, 1640, 1641——Liability of the tenant to ejectment if he gets into arrear after the fair rent has been fixed, 1642–1645.

Great variation in the size of holdings dealt with under the Acts, 1661–1664——Explanations with further reference to the questions taken into consideration in dealing with tenant's improvements of different kinds, and the allowance made in cases of drainage, &c., 1665–1667——Impossibility of fixing a fair rent suitable for all time, in view of the immense depreciation that may take place in the value of cattle and other produce, 1678–1684.

Statement as to the holding being valued as it stands for rent in the case of a fee farm grant, the tenant paying on his own improvements, 1685–1687——Absence of any special rule for the guidance of valuers as regards uniformity in the case of town lands, 1688, 1689.

Very large proportion of tillage in Ulster as compared with Munster, improvements applying chiefly to tillage lands, 1690–1694——Doubt as to the origin of the requirement that the tenant must specify on his notice a test of the improvements, 1695–1700——Approval of a rule that the amount allowed for improvements should be stated on the Fair Rent Order, 1701, 1702.

Very limited extent to which there has been any dissent between witness and his Sub-Commissioners; statement hereon upon the question of Colonel Bailey having dissented (in favour of the tenants) and having been shifted in consequence from one Commission to another, 1703–1714——Relative advantage and disadvantage of the landlord, on receipt of the originating notice, notifying the tenant as to any points of law intended to be raised, 1715.

[Third Examination.]—Concurrence in the view that the service of an originating notice upon the landlord should be made as easy as the service of an eviction notice upon a tenant; several obstacles at present in the way of the former process, 1717–1725——Non-objection to the rule as to service of an originating notice by means of a registered letter, 1726.

Entire agreement with the recommendations of the Select Committee of the House of Lords in 1882 and 1883, in favour of its being clearly shown what sum should be deducted from the rent in respect of the tenant's improvements; dissent from the objections raised hereon by Mr. Justice O'Hagan and the other Land Commissioners in 1883; 1727–1730——Approval of a record of the amount allowed to be deducted for each different class of improvement, 1730–1736——Facility of arranging for showing on the back of the Fair Rent Order the allowance for improvements, 1737, 1738.

Evidence showing that a Fair Rent Order has no final validity in the Common Law Courts, and may be set aside under different circumstances; several cases cited in illustration, 1739–1751——Degree of conflict between recent and former decisions of the Court of Appeal; prejudicial effect of certain recent decisions as regards dairy and grazing farms in Munster, 1751–1771.

Report, 1894—*continued.*

Bailey, W. F. (Analysis of his Evidence)—*continued.*

Statement as to the Judgments of the Land Commission having been omitted till lately from the Law Reports; consequent uncertainty and difficulty in future years, 1772–1779——Explanations with further reference to the Ulster custom and the different conditions and usages which exist on different estates on the question of free sale, &c., 1780–1792——Consideration of certain restrictions upon the operation of the free sale provisions of the Act of 1881; reference to the first section as intended to apply to sales in the open market, 1793-1804.

Question further considered as to notice being given to the tenant of all objections proposed to be raised by the landlord on points of law; difficulty in preventing objections being suddenly raised, 1805–1814. 1916–1919——Very close and minute inquiry on the part of the Court of Appeal in Land Act cases; illustration in the recent case of Martin *v.* Lord Annesley, 1815–1823.

Statement on the subject of the non-return to the tenant of any fine or caution money paid by him as security at the beginning of his lease, 1824–1831——Further reference to the limitation of the fair-rent system to certain classes of tenants; exclusion of those who have contracted not to take the benefit of future legislation, 1832–1836.

Evidence as to appeals from witness' tribunal, with special reference to rents fixed in Cavan; qualifications of the two appeal valuers, Mr. Bamford and Mr. Callan, a large number of these rents having been raised by the Chief Commission, 1837–1850——Ample evidence before the Chief Commissioners over and above the valuers' Report, in cases of appeal, 1843–1845. 2161–2171——Practice of the Central Commission in regard to sending appeal valuers to any county without consulting them in the matter, 1851–1855.

Reasons why the tenants are required to state the valuation of their holdings on the forms issued by the Commission, 1856——Causes of the more numerous sub-letting exclusions in Ulster than elsewhere, 1857, 1858——Reference to some rents on the estate of Mr. Villiers Stuart, in Waterford, which were originally 6*d.*, and were gradually raised; increase to 4*l.* eventually, through the decision in the case of Adams *v.* Dunseath, 1859–1867. 1951–1965——Explanation of the practice generally in dealing with reclamation of waste lands and in estimating the allowance to be made to the tenant under different circumstances, 1868–1896.

Necessity of a re-hearing of contentious cases when the statutory term expires; liability of the tenant to points being raised which may exclude holdings on which fair rents have already been fixed, 1897-1902——Exclusion from the Land Act if a tenant sub-lets, since 1883, a part of his holding for a cottage for a labourer, 1903-1915. 1920-1924.

Difficulty in estimating the number of cases in which tenants greatly exaggerate their improvements or fail in proving them; claim made in the great majority of cases, something being usually allowed, 1925–1938——Claims now allowed to be made for improvements made since 1870; frequent disallowance on the score of date, 1939-1943——Several classes of improvements for which claims are made; doubt as to the relative amount of claims in Ulster and Munster, 1944–1948.

Great variety of conditions and circumstances taken into consideration in deciding tenants' claims for improvements; frequency of contribution by landlords, whilst temporary remission of rent is sometimes allowed, 1956. 1966-1982——Particulars with further reference to the procedure of the lay Sub-Commissioners in valuing a farm and in dealing not only with improvements but with deterioration, 1983-2001.

Explanatory statement as to the extent to which the presumption in regard to improvements is in favour respectively of the landlord and of the tenant; onus upon the tenant in certain cases to produce evidence, 2002–2017——Presumption absolutely in favour of the tenant in all cases under the Ulster custom, 2003, 2004——Records kept by the landlords or their agents of improvements upon large estates, but not often upon the smaller estates; question of having no presumption either way in the latter class of cases, 2018–2026.

Examination as to the effect of the Acts of 1870 and 1881 in making the tenant a part owner, 2027–2046——Difficulty as to the precise limit of rent in order that tenants of pasture holdings may have the benefits of the Acts, 2047–2052——Exclusion of evidence as regards temporary abatements by landlords when fair rents were being fixed, 2053–2055.

Scale of prices laid down in the Act of 1853 and in all the valuation Acts; statement hereon as to the lower prices in Griffith's Schedule than are now returned, 2056-2063——Object of the short term leases occasionally made by the Land Judges, 2064, 2065——Examination as to different classes of fee-farm grants, and as to the principles adopted in fixing the redemption value in those cases which come under the Land Acts, 2064-2100.

Statement

Report, 1894—*continued.*

Bailey, W. F. (Analysis of his Evidence)—*continued.*

Statement on the question of the Judgment (not officially reported) of the Lord Chancellor in the case of Conroy *v.* Drogheda having reversed or confirmed a previous decision in the case of M'Donnell *v.* Blake, 2101–2107——Different circumstances under which it has been held that pastoral holdings are outside the Land Acts, 2107–2109——Frequent question whether the right of turbary attaches to a holding; procedure in such cases, 2110–2113.

Consideration of certain provisions in the Acts of 1881 and 1887 on the subject of sub-lettings for labourers' cottages; reference especially to Kennedy's case, 2114–2126——Few applications before witness in cases where the landlord is tenant for life, these being excluded from the Land Act, 2127–2134——Provisions in the Acts of 1881 and 1887 under which tenants in arrear may obtain a stay of proceedings pending application for a judicial rent, 2135, 2140.

Way in which a record of what is allowed for improvements would operate in preventing appeals, 2141–2143——Statement with further reference to the liability of the tenant's title to be questioned at any time; liability also of the Commissioners' decisions to be reversed, 2146–2157——Non-objection to an official staff of reporters for reporting the Judgments of the Sub-Commissioners, 2158–2160.

[Fourth Examination.]—Explanations with further reference to the case of Conroy *v.* the Marquis of Drogheda, the effect of the Judgment (recently reported in the "Law Times") being that it is quite possible to determine a present tenancy if the parties have the intention so to do, and without resumption of the holding by the landlord, 2172–2182. 2198–2213. 2222–2228.

Further evidence in elucidation of statement that it is open to a Common Law Court to question the validity of a Fair Rent Order, and to set it aside if made *ultra vires* or without jurisdiction, 2182–2197. 2545–2547——Information respecting the case of a tenant of the Marquis of Downshire at Dundrum, named Quinn, in which case a fair rent was fixed by witness' Commission; decree of ejectment subsequently given by Mr. Justice Holmes, the Fair Rent Order having been set aside, 2186–2197. 2537–2544. 2588–2611.

Admission as regards the case of Peyton *v.* Gilmartin that the tenant was successful in resisting a judicial rent fixed during the life of the life tenant, 2214–2221——Admission also, with respect to the decision in the case of Crookshank *v.* Law, that some additional land taken by the tenant was not required for agricultural purposes, 2229–2234.

Question further considered as to what constitutes a "town park" and as to the effect of certain decisions on the subject, especially in the cases of Archer *v.* Caledon and M'Cann *v.* Downshire, 2235–2240——Statement as regards the case of McNamara *v.* McNamara, in which the Court of Appeal decided that land let in conacre was not used as an ordinary agricultural holding, 2241–2249——Large number of holdings where the rates and taxes are paid by the landlords, 2250–2255.

Belief that in a very considerable number of cases before witness his Sub-Commission has been unable to give the tenant credit for his improvements because he has been unable to prove them and because the presumption is against him, 2256–2267——Explanations with further reference to the extent of creation of new tenancies by the tenant for life or limited owner, these holdings becoming future tenancies on the death of the limited owner, 2268–2285. 2480–2482. 2489–2494. 2561–2568——Power of a tenant residing on his holding, if the valuation be under 50*l.*, to cultivate it as pasture or otherwise without being excluded from the Act, even though the land be craggy; limited number of such farms in Clare County, 2286–2290. 2346–2350.

Concurrence in the view that it is quite possible that a very large proportion of the tenants (some 250,000 in number), who have not applied to have fair rents fixed, have abstained from doing so, because they consider they are now holding at comparatively low rents, 2291. 2574, 2575——Very large number of holdings under one acre which would be excluded from the Act on a variety of grounds, 2292.

Consideration of certain conditions as to residence, &c., in connection with the question of town parks and of exemption from the Land Acts; restriction as to the owner resuming possession for building purposes, 2293–2313——Explanation of the principles by which the Court of Appeal is guided in certain cases in fixing a particular user upon the holding, 2314–2318.

Statistical information to be supplied with reference to the various restrictions and exclusions by which tenants are affected, 2309–2327——Consideration of decisions as to the extent of exclusions from the Acts through small portions of the holdings being non-agricultural, 2328–2340——Explanation with further reference to the effect of the decision in the case of Crookshank *v.* Law as regards exclusion from the Act where a small portion of land is held to be taken for non-agricultural purposes, 2341–2345.

Bailey, W. F. (Analysis of his Evidence)—*continued.*

Examination as regards the definition of town parks in connection with the question of population, witness admitting that in many instances it would be very hard on the landlords to fix purely agricultural rents, 2353–2379.

Practice in the case of English-managed estates in Ireland as to the improvements being made and maintained by the landlords; credit given them in respect thereof, though the maintenance may have been neglected, 2380–2388 —— Careful record kept on the larger estates of the landlords' improvements and of the allowances of timber, slate, &c., to tenants for improvements, 2389–2391. 2571–2573.

Explanations on the subject of the disallowance of tenant's improvements made under lease which excluded such improvements; frequency of cases before the Act of 1881 in which the tenant regarded the terms of the lease as compensation for his improvements, 2393–2474 —— Particulars of the cases of O'Neill *v.* Cooper and Dyas *v.* Scott, showing that rent was put upon improvements made by the tenants under previous leases; effect hereon of the decision in the case of Adams *v.* Dunseath, 2399–2474.

Further statement as to the position of the tenant on the score of presumption in respect of improvements; practical exclusion of claim for all improvements made before 1850, save buildings and reclamation, 2475–2479 —— Question considered as to the opportunities for fraud in the making of new tenancies by the limited owner disregarding the interests of the remainder man, as by taking a fine and fixing a low rent, 2483–2492.

Explanation that it is not suggested by witness that leases are given as a means of bringing existing tenancies outside the Act, 2493–2498 —— Large number of tenants who have got into fresh arrears since the wiping off of old arrears under the Act of 1882, 2499–2501 —— Grounds for the conclusion that a scale of prices would be very fallacious as one of the data in fixing fair rents, 2502–2508. 2515.

Approval of some general principles being laid down by the Chief Commission or the Court of Appeal for the guidance of the Sub-Commissioners, but not any detailed instructions, 2509 —— Difference occasionally between the lay Sub-Commissioners, but not as a rule, 2510 —— Very rare instances of inspection of a holding by only one Sub-Commissioner, 2511–2513 —— Opinion as to the necessity of some re-inspection of each holding after the expiration of the fifteen years' term, 2514, 2515.

Frequent cases before witness' Court in which the rents were fixed under agreements that have not been registered; great alteration in many cases, 2516–2522 —— Information as to the practice in awarding a sum to a tenant who has purchased from another tenant, in respect of his right of occupancy and of having a fair rent fixed, 2523–2536.

Liability upon the tenant in certain cases, exceedingly few in number, to pay the tithe rent-charge, 2548–2551. 2612–2614 —— Special provision made on large estates for division of the turbary, there being no turbary at all in many districts, 2552–2556 —— Frequent instances of the tenant's improvements not being worth the cost incurred, 2557–2561. 2569, 2570.

Fairness in each party paying his own costs, even when the tenant obtains a reduction of rent, 2576–2578 —— Allowance by Irish valuers generally of a third of the value of the produce for the rent, one-fifth being the rule in England, 2579–2581.

Credit given to the landlord for any increased value through the making of roads or railways, 2582, 2583 —— Several modes adopted in estimating the amount of deterioration that sometimes results from bad treatment, 2584–2586 —— Evidence available as to the condition of land before reclamation, 2587.

[Fifth Examination.]—Attention of witness further drawn to the Judgment of Mr. Justice Bewley in the case of M'Cann *v.* The Marquis of Downshire upon the question of what constitutes a town for the purposes of the Land Acts, 2615–2617.

Explanation as regards certain figures quoted to witness respecting the total number of agricultural holdings in decennial periods, the probable number of small holdings and of other holdings excluded from the Acts under different heads, and the total number in which fair rents have not yet been fixed, that he is not in a position to confirm them, and is not prepared with statistics on the subject outside those in the Reports of the Land Commission, 2618–2629. 2839–2847.

Very similar percentage of reduction in the years 1892-93 and 1893-94 in the rents under old leases; also in other rents, 2630–2633 —— Case of Dyas *v.* Scott further adverted to with reference to the question whether the lease was not adequate compensation for any improvements made, 2634–2644.

Statement as regards previous evidence of witness (*Q.* 1382, 1383) respecting the large number of restrictions and exclusions, and the effect of judicial interpretations in enlarging the number, that he adheres to such evidence without qualification, 2645–2661 —— Repetition of statement that it is a delusion to say that a Fair Rent Order is impregnable, though witness considers the protection of the Land Act is a real protection

Bailey, W. F. (Analysis of his Evidence)—*continued.*

tection, 2662–2664——Adherence to statement that there are a large number of cases, in which estates have been for a long time in settlement, where the question of new tenancies may arise, 2665–2668.

Very great number of cases in which administration is not taken out, the tenants not being aware that this is necessary for the completion of their title, 2669–2680——Instances of landlords having segregated the turbary though within the ambit of the farm; power to do so only when the turbary is detached from the holding, 2681–2685——Exceptional instances of occupiers of town parks having no other occupation than their cultivation, 2686–2690.

Information with further reference to the process in calculating the allowance or percentage to the tenant for his expenditure on improvements, any increased letting value above such percentage, but not the increased market value, going to the landlord, 2691–2713. 2764, 2765. 2780–2787——Explanation in connection with the working of Section 18 of the Act of 1881, as regards labourers' cottages; power of the tenant to sub-let for the purpose, with the consent of the landlord, 2714–2720——Limited operation of Section 19 (Act of 1881), as regards labourers' cottages, in Ulster as compared with Munster, 2721–2737.

Presumption in favour of the tenant as regards not only all improvements since 1870, but as regards buildings, &c., evidently erected by the tenant previously thereto, 2760–2763—— Statement on the subject of witness' Sub-Commission valuing the land and buildings separately, even though the latter are all provided by the landlord; necessity of showing in each case the annual value of the buildings, 2766–2779.

Concurrence in the proposition that every Fair Rent Order is impregnable, if made within the jurisdiction of the Land Commission, 2788–2792——Case of Quinn further adverted to in connection with the decree given by the County Court Judge before the fair rent was fixed and upheld subsequently thereto by Mr. Justice Holmes, 2793–2808——Explanations with further reference to the decision in Conroy's case and to the doctrine of surrender by operation of law as re-introduced by such decision, 2809–2823.

Considerations as to the inoperativeness of the ninth section of the Act of 1881 with respect to the Commission taking into account unreasonable conduct of either landlord or tenant, 2824–2831——Doubt as to there being any instances of tenants exercising their right to sell pending ejectment, 2832–2836——Non-application of the decision in the case of Adams *v.* Dunseath to holdings under the Ulster custom, 2837, 2838.

[Sixth Examination.]—Four Returns handed in relative to the working of the Land Act of 1870 as incorporated with that of 1881; 3299, 3300.

Bailey, Mr., Decision of the Committee that certain correspondence which has taken place between Mr. W. F. Bailey and Lord Justice FitzGibbon shall be made public in the same way as that between Mr. Justice Bewley and Lord Justice FitzGibbon was given to the public, *p.* 581——Copy of the correspondence in question, which has reference to certain evidence of Mr. Bailey respecting the decisions of the Court of Appeal, *pp.* 581–583. 606.

Barley. Importance of the barley crop in King's County and Tipperary, the produce of two and a-half acres of barley usually paying the rent of a farm of twenty acres, *Garvey* 11865–11871. 12257–12270.

Barnes, William A. (Analysis of his Evidence.)—Witness is a tenant, landlord, and owner in fee, having about 500 acres under his hands; has been engaged in agriculture for over thirty years, 12840–12845.

Evidence to the effect that witness has made a great number of valuations for arbitration purposes and has been very extensively employed as a professional valuer under the Land Commission; he has valued in twenty-four of the counties of Ireland, 12846–12855——Experience of witness that farming in Ireland pays, tillage being more profitable than grazing; belief that the small farmers are doing much better of late years than the large ones, 12856–12859.

Statement that, as a rule, the tenants' improvements have not been on a very large scale on the farms that witness has valued, there being much more deterioration than improvement of the land, 12860, 12861. 12887–12890——Superficial character of the drainage executed by the tenants; amount claimed for drainage by the tenant very often in excess of the value of the benefit derived from the improvement, 12862, 12863.

Enumeration of estates on which the landlord either erects the buildings or contributes materials towards them; allowance to the landlord of not more than four per cent. in such cases, when fixing the fair rent, 12864–12866. 12879–12881——Practice of witness to give the tenant three-fifths and the landlord two-fifths of any increased letting value due to tenant's improvements that may remain after the tenant has been allowed about five per cent. upon his outlay, 12867–12872.

Report, 1894—*continued.*

Barnes, William B. (Analysis of his Evidence)—*continued.*

Custom of the landlord not to claim for the buildings unless he has a substantial reason for doing so, 12873——Result of witness' experience that the tenants have no difficulty in proving their improvements, except perhaps in cases of reclamation made many years ago, 12874-12878.

Large number of cases in which the claim made by the tenants for improvements is too wide or too large, 12882-12886——Opinion that in cases of deterioration of land the landlord suffers when a fair rent is fixed, the Commissioners valuing the land as they find it, 12887-12891.

Particulars as to the sums realised by the sale of tenant's interests, the cases where the rents were judicial being distinguished from those where they were non-judicial, 12892-12927——Explanation that witness takes the tenant's occupation interest into consideration when fixing a fair rent; definition of the occupation interest as the difference between the judicial rent and a fair competitive rent, 12928-12934.

Unwillingness of the Commissioners to fix a specified value, unless they obtain very good evidence in regard to it; grounds for the opinion that there is no injustice to the tenant in fixing the specified value, 12935-12941—— Sundry reasons why the prices of tenancies are higher in Ulster than in other parts of Ireland, 12942-12947.

Acceptance by the tenants, voluntarily, of witness' valuation in the great majority of cases settled by agreement out of Court, 12948-12953—— Particulars of cases in which drainage improvements have been executed with money borrowed from the Board of Works, the landlords having to pay the amounts assessed on the tenants as well as those assessed on themselves, since fair rents were fixed, 12954-12964.

Gradual deterioration in the quality of cattle since 1879, causing a fall of about fifteen per cent. in prices, 12965-12970——Grounds for disapproving of the suggestion to abolish town parks, 12971-12974.

Inadvisability of making any alteration in the law relative to pasture holdings, 12975-12978——Desirability of discouraging sub-letting; knowledge of cases where the tenants sub-let at higher rates, in comparison, than they themselves pay, 12979-12982.

Opinion that the question of cost does not deter tenants from going into Court, 12983-12985——Possibility of a sliding scale being worked out so that rents can be fixed according to price at the end of the statutory term, there being a right of appeal as to value; reliability of the scale of prices published by the Land Commission from time to time, 12986-12998.

Rarity of increases of rent on the estates that witness has had to deal with, 12999-13004—— Experience of witness that mistakes as to boundaries have been made by the Sub-Commissioners, and corrected by the Head Commission, 13005-13008.

Bayly, Colonel E. R. (Analysis of his Evidence.)—Experience of witness as a lay Assistant-Commissioner since 1881 in fixing rents under the Land Acts in almost every county in Ireland; extensive experience previously in connection with land, 3506-3526 ——Several legal Sub-Commissioners under whom witness has acted; single instance of his having served under Mr. Bailey, 3527-3529.

Information as to the procedure of the lay Sub-Commissioners (after evidence has been taken in Court presided over by one legal Sub-Commissioner) in their inspection of each holding in order to procure the data for the fixing of a fair rent, 3530 *et seq.*—— Full note taken, when on the land, of all improvements, which are marked on the map, (those claimed by the tenant being set out on the originating notice), 3534. 3546-3550 ——Record made of the boundaries, these being correctly supplied by the tenant in the vast majority of cases, 3535-3546.

Great variation in the time occupied by each inspection; average of about three cases a day, 3551-3554. 3690-3693——Completion of the work by witness and his colleague during a day in office, the data being then got ready for submission to the legal Sub-Commissioner, 3555——Note made upon the map of the different kinds of soil and of the quantities, the land being classified and the produce being considered, 3557. 3694-3698. 3704-3707——Explanation that prices are taken into account, but only in a general way, 3558-3572. 3699-3703. 3839-3841.

Reference to proximity to a good market as an item in considering the value; limited use made of the railways, 3573-3575. 3858——Circumstances under which turf is taken into consideration as affecting the value, 3577-3582——Consideration allowed for fishing facilities, 3583. 3584.

Particulars as to the course adopted by witness in valuing the various classes of improvements, viz., reclamation, draining, fencing and building, and as to the evidence obtained from tenants in respect thereof, 3585-3618. 3637 *et seq.* 3735 *et seq.*—— Frequent production by the tenants of accounts of their outlay on improvements; difficulty when the improvements have been made by their fathers, oral testimony being, however, accepted, 3587-3593. 3637-3639. 3660-3676.

Instances

Bayly, Colonel E. R. (Analysis of his Evidence)—*continued.*

Instances of non-allowance for tenants' improvements, so called, as when they are not worth the outlay, 3597-3605 ——Practice as regards buildings in respect of allowance to the tenant or the landlord, respectively; admitted claims of tenants as a rule in Ulster, whilst elsewhere the claim is often made by the landlord, 3618-3623 —— Approval of the presumption as to buildings and other improvements being generally with the tenant, 3624-3626. 3636.

Way in which it may be allowed to tenants to claim improvements, if they have omitted to do so on the originating notice, 3627, 3628. 3788-3796 ——Unfair operation as regards tenants of the pre-emption right of the owners, 3629-3631.

Suggestion that the expense in fixing fair rents may be reduced by facilitating agreement between the landlord and the tenant free of cost, at the instance of the Court valuer; objection in such case to an appeal on value, 3632-3635 ——Difficulty in estimating the increased letting value per acre by outlay on drainage or other improvements; frequency of large outlay without any corresponding increase of value, 3708-3729.

Frequent instances of deterioration of the land, as through over-cropping, exhaustion of drainage, &c., 3730-3734——Valuation of the land, before taking the improvements into account; full benefit given to the tenant, as for reclamation and thorough drainage, 3735-3744.

Discontinuance by the Land Commission since the Labourers Act of the former practice of looking into the condition of the labourers, 3745——Allowance made to the landlord for rent where he has been ordered to build a new cottage, 3746-3750.

Explanations respecting the proposals of witness, as compared with those of Mr. Bailey, for facilitating voluntary settlement of the rent between landlord and tenant without legal intervention, unless they failed to agree; belief that in numerous cases this arrangement would be accepted by both parties, 3751-3766——Practice of witness to exempt from rent in all those cases in which it is clear that improved buildings were at the cost of the tenant, though there may not be evidence to that effect, 3767-3777.

Variation in the allowance made for reclamations by tenants, according to the quality of the soil; non-adoption of percentage allowances, 3778-3787——Different rule adopted as regards drains, and as regards buildings, in making allowance for tenants' improvements, though not claimed on the originating notice, 3788-3806.

Explanation as regards the right of pre-emption that in fixing the fair rent witness does not take into consideration what the competition value would be nor what family the tenant has to support, 3807-3831——Practice of witness in fixing the fair rent to value the land as he sees it, according to his practical experience of what it is worth, the tenant being allowed no deduction for deterioration if wilful on his part, 3819-3824. 3842-3857. 3876-3879.

Examination as to the course pursued by witness in dealing with tenant right under different circumstances, due allowance being made to the tenants for improvements, 3859-3879——Further reference to the allowance made for tenants' drainage and for the labour expended thereon, 3880-3888——Relative difficulty of owners of small estates and of tenants in proving improvements; frequent instances of information through the tenants as to the supply of materials by the landlord, 3889-3897.

Conclusion that a revision of rents after the fifteen years' term according to a scale of price would not work, and that an Assistant Commissioner or valuer should inspect each holding in order to re-determine the fair rent, 3898-3902——Approval of the rule being made compulsory as to landlord and tenant consenting that the fair rent shall be determined by a valuer or valuers appointed by the Land Commission; frequent ignorance on the part of tenants respecting the existing rule, 3902-3920.

Very little advantage in numerous cases from the hearing before the Sub-Commission where there is no law involved; simpler procedure desirable, to be completed before the valuer, 3910-3920——Average cost of 30*s.* to the tenants in a number of very small cases before witness; inconvenience and loss of time in coming to the Court, 3921-3929.

Information as to the practice of witness in valuing land with reference to its capabilities of improvement and reclamation, and in making allowance to the landlord for improvability, the tenant being credited only with the actual improvements made by him, 3930-3975——Practice as regards buildings to add a percentage if they belong to the landlord, whilst no rent is put upon them if they belong to the tenant, 3976-3985 ——Frequency of landlords making no claim in respect of buildings, there being very often no controversy on the question, 3986-3993.

Approval of the requirement as to endorsement of the particulars of improvement upon the originating notice, an adjournment being always allowed on application with a view

Bayly, Colonel E. R. (Analysis of his Evidence)—*continued.*

view to the particulars being supplied, 3994-3999——Instances of refusal of allowance for tenants' improvements through their not being stated on the originating notice; legal prohibition upon allowance when not so stated, 4000–4006——Advantage of some provisions for preventing injustice to tenants through omission to claim improvements on the originating notice, 4007–4011.

[Second Examination.]—Opinion that the landlords are not affected injuriouly or unfairly by the Land Acts, though they have doubtless suffered very much in reduction of rents, 4012-4014. 4018–4020—— Frequent injury to tenants in getting only partial compensation for improvements or in getting none at all; corresponding gains to the landlords in such cases, 4015–4020. 4126–4136.

Advantage to the landlord, to the prejudice of the tenant, under the pre-emption right of the former, whereby he can have the specified value put upon the holding when the judicial rent was fixed; deterrent effect thereby upon subsequent improvements by tenants, 4021–4034—— Great injustice to the tenant as regards fee-farm grants by reason of his being rented on his own improvements, 4035–4038——Decided effect of arrears in deterring tenants from going into court, 4039-4041. 4181, 4182.

Long established practice as to the tenants paying their own costs, whether they win or lose, so that they have become reconciled thereto; opinion that the costs should follow the decision, 4042–4046. 4173-4175—— General custom of the country for the tenant to maintain all the improvements, and do the repairs, it being a hardship that he should have to prove them; opinion that they should be assumed to be the property of the tenant, 4047-4066——Advantage as regards improvements and facility of sale of those tenants who can prove they are under the Ulster custom, witness seeing no reason for this distinction, 4058–4066. 4272–4277. 4293, 4294.

Further explanation that witness values each holding irrespectively of any buildings belonging to the tenant, an increased rent being put on when these belong to the landlord, 4067-4079—— Examination to the effect that witness gives value to the landlord for what the land is worth in its wild state, according to its soil and improvability, regardless of the rent, but that he makes allowance to the tenant for all further increase of value through improuement or expenditure by him, 4080-4125. 4154-4162. 4210-4242. 4263-4267——Different practice apparently of Mr. W. F. Bailey and Mr. Doyle, as compared with the foregoing practice of witness; obligation upon him to follow the ruling of his legal Sub-Commissioner on legal points only, 4080–4125. 4212–4217. 4240–4242.

Conclusion further expressed that the Acts are entirely in favour of the landlords, and are injurious to the tenants in many respects, 4126–4130—— Great difficulty in tenants remembering all their improvements, whilst they keep no records; difficulty also in proving improvements by their predecessor in title, 4131–4148——Absence of any obligation upon the landlord to set forth his improvements on the originating notice; belief that at first it was not necessary for the tenant to do so, 4136–4139.

Inconvenience formerly when the tenants had to provide maps of their holdings, the maps being now supplied by the Land Commission, 4149–4153——Much wider interpretation given of late years to the term "town parks," 4163–4168——Very few instances of mill farms where the mill is is confined to the purposes of the holding, 4169-4171.

Practice of witness not to allow the tenant any deduction for deterioration of the holding if caused through his own neglect, 4172—— Approval of the Sub-Commission Court being the final court as regards value and fact, exclusive of law points, 4176 4180.

Several reasons which account for the large number of holdings which have not come under the Acts, temporary abatements and the existence of arrears being the main causes, 4181, 4182——Reluctance of tenants to appeal on account of the costs, 4183-4189—— Limited difficulty in determining whether a holding is non-agricultural; reference to the legal Sub Commissioner in doubtful cases, 4190–4197.

Unanimity generally of the Sub-Commissioners in their decisions; unsatisfactory disagreement in some cases, 4198–4205—— Action of the lay Sub-Commissioners according to their own discretion, there being no fixed rules for their guidance, but reference being made to the legal Sub-Commissioners on points of law, 4206–4209. 4212, 4213.

Explanation respecting the practice of witness in dealing with minor improvements by tenants by allowing them a percentage upon the outlay, 4243-4262—— Fairness in giving the increased letting value to the tenant, all the improvements being as a rule made by him, 4268-4271—— Expediency of tenants generally having the right to sell in the open market, without any right of pre-emption in the landlord save in certain cases, 4275–4277. 4293, 4294.

Statement

Bayly, Colonel E. R. (Analysis of his Evidence)—*continued.*

Statement as to there being no evidence before the Sub-Commissioners when fixing the specified value of the tenancy, except the evidence upon which the fair rent is fixed, 4278-4286——Valuable interests of the tenants under the Land Acts by reason of their right to compensation for improvements and to perpetual occupancy, subject to the fair rent fixed; conclusion that there should also be a right to sell these interests in the open market, 4287–4294.

Considerable difference between the former competition rents and the fair rents fixed under the Land Acts; average of about twenty per cent. reduction in the latter case, 4295–4303——Lower rents fixed by the Assistant Commissioners within the last seven or eight years; insufficient allowance to tenants previously to 1885; 4304, 4305. 4408——Frequency of the tenant's interest in the holding being equal to that of the landlord; instances of the former interest being the greater, the tenant being by law a part owner, 4303. 4319–4325.

Various considerations, as regards prices, production, total value of produce, &c., by which witness is influenced in fixing the fair rent; great variation between the fair rent and the produce, 4306–4318——Reiteration of the view that the presumption as to improvements should be in favour of the tenant, 4326–4328——Concurrence in some exceptions taken to the procedure in connection with appeals; approval of a suggestion hereon by Mr. Bailey, 4329–4338.

Grounds for objecting to the tenant being supplied with information as to the full letting value, and the allowance for improvements; expediency of their being told only the fair rent, as less likely to lead to appeals, 4339–4350——Reference to the rule as to costs when a judicial rent is fixed and the tenant appeals, 4351–4354. 4477.

Examination respecting bog holdings in Connaught improved entirely by tenant labour, there being in some cases no element of improvability to the credit of the landlord; instances of such holdings let at 10*s.* an acre and upwards, the tenants being fairly entirely to a large reduction, 4355–4400——Rough average taken by witness over a period of seven or ten years as regards prices when fixing the fair rent; advantage on this score if the statutory term were reduced from fifteen to seven years, 4401–4419.

Concurrence with Mr. Commissioner FitzGerald as to the loose process of fixing rents between the years 1881 and 1886, no maps having been forthcoming; belief, however, that the soil was tested as carefully as in recent years, 4420–4435——Opinion that the rents fixed by witness between 1881 and 1887 would not now be fair rents, 4436, 4437.

Conclusion that at the end of the statutory term, in all non-contentious cases, there should be facilities for settlement through a single valuer or Sub-Commissioner, 4438–4449——Opinion that sub-letting is the principal cause of tenants being ruled out of the Land Court, 4450, 4451——Hardship on mill holdings being ruled out of the Act as not being purely agricultural holdings, 4452, 4453.

Full knowledge of witness and other Sub-Commissioners as to the Ulster custom, 4454–4461——Practical settlement of fair rents by each individual Sub-Commission, the legal Commissioner deciding when there is any difference between the other two Assistant-Commissioners, 4462–4476.

Bewley, Mr. Justice. (Analysis of his Evidence).—Witness was appointed Judicial Commissioner of the Land Commission and a Judge of the Supreme Court of Judicature in Ireland in December 1890; has had a large experience in connection with cases under the Land Acts, 10077–10079.

Evidence to the effect that witness' present duty is to preside over the sittings of the Land Commission, held all over Ireland, for re-hearings and appeals; also to sit with Mr. Commissioner Fitzgerald in Dublin to hear motions in fair-rent cases, 10080–10082.

Statement that since his appointment in 1890 witness has delivered judgment in 4,540 fully heard out cases, in 991 of which legal questions arose; no doubt that valuation is the most important element for decision in the majority of appeal cases, 10084–10095——Various kinds of motions on which witness makes orders, some of them involving decisions on important points of law, 10090–10093.

Satisfaction of witness with the way in which judgments on land cases are now reported, all his important decisions being accessible to the Sub-Commissioners, the profession, and the public; desirability, however, of a barrister's authenticated report of leading cases, 10096–10105——Detailed account of the procedure adopted in the ordinary cases of re-hearing on appeal from the Sub-Commission; great advantage of the appellate jurisdiction over the Sub-Commissioners, it having an important steadying effect on them, 10106–10133.

Submission of a table, prepared by the registrar, showing the cases in which there has been a substantial increase or decrease in the amount of the rent; also a table of the increases in the true values, 10119–10133.

Report, 1894—*continued.*

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

Refusal of the Land Commission Court in the time of Judge O'Hagan and Mr. Justice Litton to grant leave to appeal after they had affirmed the decision of a Sub-Commission; practice of witness and Mr. Fitzgerald, on the contrary, to allow an appeal whenever there is an arguable question in the case, 10134.

Desirability, in view of the decision of the Exchequer in the case of Fox *v.* Langan, of legalising the practice of the Court in appointing a limited administrator for a deceased tenant, 10135-10138——Accuracy of Lord Justice FitzGibbon's List of Appeals, 10139.

Statement that since 1890 there have been 113 appeals from the Land Commission Court and Judicial Commissioners sitting alone, and that of the eighty-seven decisions for which witness was responsible sixty were affirmed and twenty-seven reversed by the Court of Appeal, the latter including some of his most important cases, 10140-10143——Return issued by the Land Commission of the cases struck out, withdrawn, and dismissed, the total being 56,823; detailed explanation as to the various classes of cases included in the 7,641 shown as dismissed, 10144-10159.

Decided opinion that there is nothing in the Act of 1881, or in any Act, giving any increased tenure to a tenant from year to year, the statutory conditions existing only within the statutory term; necessity of obtaining a further statutory term at the end of every fifteen years, if the tenant wishes to secure himself against a determination of the tenancy, 10160-10190——Power of the landlord and tenant to enter into an agreement, during the last year of a statutory term, which shall have the effect of creating a fresh statutory term, 10189, 10190.

Recommendation that authentic maps showing the holdings on which judicial rents have been fixed, with appropriate reference numbers, should be kept in bound volumes, arranged in counties, 10190, 10191——Effect of the Act of 1870 to give the tenant, for the first time, a special property in his improvements, subject to certain exceptions in the 4th Section of the Act; provision in the Act of 1881 for the tenant to have a fair rent fixed, no rent being assessed on improvements made by the tenant or his predecessors in title, 10192 *et seq.*

Evidence in support of the contention that the practice of the Land Commission is in accord with the judgment of Lord Justice FitzGibbon, in Adams *v.* Dunseath, that any improved value of the land remaining after allowing the tenant in the rent for his improvement works should be apportioned between the landlord and tenant, having regard to the "tenant-right" of the latter, 10194-10206——Production by witness of a letter from Lord Justice FitzGibbon in which the Lord Justice states that witness' interpretation of his evidence in regard to Adams *v.* Dunseath is correct; non-objection on the part of witness to the whole of the letter going on the minutes if so desired, although he would have preferred to omit the passage respecting Mr. Bailey, 10198-10206.

[Second Examination.] Further demonstration of the identity of view between witness and Lord Justice FitzGibbon, as regards the apportionment of the residue of the improved letting value after due allowance has been made to the tenant for the improvements, 10207 *et seq.*——Evidence in support of the argument that the tenant has a further interest, beyond that due to his improvements, that has to be considered in fixing the fair rent, namely, his occupation interest, 10215 *et seq.*; 10288-10290.

Opinion that nothing short of legislation could transfer any of the improved letting value to the tenant, over and above the annual allowance made to him in respect of his improvement works, 10226, 10227——Explanation that when once a case is delegated to a Sub-Commission, presided over by a competent legal gentleman, the Land Commission has absolutely no jurisdiction over that case until it comes before them on a re-hearing, 10230-10234.

Impossibility of the Land Commission giving any instructions to the legal Sub-Commissioners in law, and to the lay Sub-Commissioners in matters of valuation, on points that had not arisen; agreement of witness with the opinion expressed by his predecessor on the subject, 10234, 10235. 10296-10299——Contention that the Sub-Commissioners have, in fixing fair rents, made allowance for the occupation right of the tenants; certainty, however, that a number of the rents that have come up on appeal from Mr. Doyle have been reduced, 10236-10246. 10296-10299.

Opinion that it would be disastrous to both landlords and tenants if the re-fixing of fair rents at the end of the first statutory term should be settled by litigation; recommendation that the Land Commission should have the power to send a valuer to settle the rent conditionally, both sides having the right of appeal to a Sub-Commission, 10247-10257. 10273-10284——Suggestion that the amount allowed for each improvement should be shown on the face of the report made by the Land Commission valuer when settling the rents at the end of the statutory term, 10251, 10252.

Opinion

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

Opinion that the number of legal points that will arise at the end of the first statutory period will be comparatively few, as most of the legal questions at issue will have been finally decided, 10257–10265——Grounds for witness' view that extensive sub-letting should be discouraged; proposal that sub-tenants, to the extent of ten or twelve acres, should be made immediate tenants to the head landlord, 10266, 10267. 10285–10287.

Undesirability of disturbing those sub-tenants who are merely sub-tenants of labourers' holdings, 10267——Recommendation that in cases where a small portion of a holding is not within the purview of the Act, and the tenant wishes to get the status of an ordinary agricultural tenant, the land outside the Act should be given up and a fair rent fixed on the remainder, 10267–10269.

Grounds for the opinion that town parks ought not to come within the purview of the Act at all; submission that lands, that would be town parks if let to a farmer living in the town, should not come within the Act if used as dairy farms, 10270–10272 —— Insufficiency of the registration of the improvements for which the landlords and the tenants have received credit, 10276–10278.

Desirability of there being some rules laid down by the Legislature as to what is true value; reasons for the conclusion that true value is not the competitive value, 10287–10290——Explanation as to the status of a "future" tenant, he being in a very much worse position than a "present" tenant, especially in that he is liable to eviction at the end of the statutory term, 10291–10293.

Importance of providing some means by which the rents fixed under the 4th Section of the Act, with regard to future tenants, can be recorded, 10294——Inadvisability of making any alteration with regard to the conditions as to sub-division; disapproval of sub-division among the members of a family, especially when there is not enough capital, 10295.

Explanation as to witness' decision in Mollan *v.* Keeran, that the large fine paid should not be taken into consideration in fixing the rent; regret that the Rent Redemption Act has not placed long leaseholders and fee-farm grant holders in the same position as ordinary leaseholders, 10300 *et seq.*—+ Contention that if any alteration of the law be made under which long leaseholders and fee-farm grantees are to be brought within the Act, those men who are practically, although not legally, tenants should also be included, 10315–10323.

Statement to the effect that as the law now stands the fact that a landlord has taken rent for years without objecting to sub-letting does not amount to consent on his part to the sub-letting, 10324–10327.

[Third Examination.]—Particulars of the case of Kennedy *v.* Essex, which had an important influence on witness' judgments in regard to sub-letting; absence of any hard and fast line as to sub-letting, what might be trivial in one case not being trivial in another, 10328–10344——Effect of the Court of Appeal judgments that the mere fact of demesne lands being granted by fee-farm grant or demised by lease for a very long time is not sufficient to deprive them of their character of demesne lands, 10345–10355. 10450, 10451.

Evidence to the effect that, in consequence of the result in Caledon *v.* Archer, and of other recent decisions, the law relative to town parks has been considerably narrowed from the tenants' point of view; information as to the exact meaning of a "town" in the Land Acts, 10355–10372. 10405 *et seq.*——Great change in the system of agriculture in Ireland, tillage giving place to a great extent to pasture; probability that pasture holdings were excluded under the Act of 1881 because graziers are not an improving class of farmers, but migratory in their habits, 10373–10379. 10413.

Practice of the Land Commission not to exclude dairy farms from the benefits of the Act; statement that the practice has not as a rule been questioned, 10377–10379. 10416, 10417——Evidence as to the position of a tenant under a limited owner, the former's interest terminating on the eviction of the latter unless he redeems; explanation that if the sub-tenants restore the middleman they have a charge on his interest, 10380–10389. 10399–10404.

Inclination of witness to the opinion that the statutory period of fifteen years should not be disturbed unless there is a very great variation in prices from time to time; possibility that the shortening of the period might unsettle the tenants, 10390–10398—— Belief that the rents fixed between 1881 and 1885 are higher than they would be if fixed at the present time, 10392–10394.

Desirability of a legislative decision upon the question of town-parks; suggestion that the only solution of the difficulty in regard to a "town" is a population limit, 10411, 10412—— Opinion that tenants holding lands that cannot be used for anything but pasture should have the right to have a fair rent fixed; recommendation that the two Sub-sections of Section 58 should be left as they are, except that the limit in the first should be a valuation of 100*l.*, instead of 50*l.*, a year, 10413–10416.

Report, 1894—*continued.*

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

Impression that if witness' suggestion as to the mode of fixing the fair rent at the end of the statutory period were adopted, the rent so fixed would be accepted in a vast number of cases; advantage, however, of retaining the right of appeal, 10418–10422. 10490–10492. 10510——View of witness that a great deal of the discussion as to the apportionment of the increased letting value is purely academic, as in many cases nothing would remain after a due allowance had been made to the tenant, 10423–10428.

Statement that there have been cases in which hardship has accrued to the tenant by the omission of improvements from the originating notice; power of the tenants, however, to appeal and have the omitted improvements considered by the Land Commission, 10429–10433——Doubt as to the possibility of estimating the percentage of difference between a competitive and a fair rent, 10434–10436.

Occurrence of cases in which the additional rent due to drainage works executed with money borrowed from the Board of Works was largely in excess of the benefit conferred by the improvement; statement that when the tenant has paid the instalments by way of additional rent to the landlord he acquired the improvement, 10437–10450. 10654–10657——Option of the landlord under the Redemption of Rent Act either to have his rent redeemed or to go into court to have a fair rent fixed; heavy costs involved in the redemption of rent, 10450–10463.

Reiteration of witness' previous statement that when once a fair rent has been fixed it is only necessary for the tenant, in order to preserve his continuity of interest, to apply for another 15 years' term at the end of each statutory period, 10464 *et seq.*——Right of the tenant under the Act of 1887 to compensation for disturbance and for improvements if he acquiesces in the landlord's notice to quit and leaves at the end of the statutory term, 10469–10474.

Absence of any decision as to the value of the occupation interest, the question never having been raised before the Land Commission or any Sub-Commission; opinion that the Court of Appeal judgment in Adams *v.* Dunseath left the question open, 10475–10489. 10528–10559. 10615–10619——Inability of witness to say whether the rents fixed by agreement out of court in the early days of the Land Act were higher than the judicial rents then fixed; probability that if the judicial rents had come up for revision in 1885 to 1887 they would have been reduced as much as the others were, 10493–10502.

Doubt as to the Land Commission being able to give any information, additional to that in the annual reports, respecting the difference in the percentage and reductions on former rents in the two cases of rents fixed by agreements and rents judicially determined, 10503–10507——Experience of witness that tenants are not deterred from from coming to court by fear of costs; information as to the incidence of costs of re-hearings, 10508, 10509. 10620–10632.

Sketch of the present method of procedure in the Court of Appeal in determining questions of value; statement that witness does not act on the principle of Judge Shaw and disregard the landlord's and tenant's evidence as to value, 10510–10559. 10633–10640——Practice of witness in allowing for improvements to ascertain what the present value of the improvements is and "to settle the rent in respect to it, giving such a sum as will insure that the tenant is not rented on the value of his improvement works, 10566 *et seq.*

Explanation as to the principle on which the case of Patrick Moore, on the estate of Mr. Villiers Stuart, was decided; whatever the value of the reclamation may have been, it was considered to have been satisfied by the tenant's enjoyment of the holding for fifty years at a rent of 6*d.* a year, 10564–10594. 10615–10619——Absence of difference, as regards presumption in favour of the tenant, between reclamation and any other improvement, 10595–10599.

Evidence to the effect that improvements of the nature of reclamation, but made on land already in cultivation, are not as a rule treated as reclamation proper, 10600–10604——Information as to the circumstances under which a new tenancy is created, excluding the tenant from the court, 10605–10615.

Right of either party to transfer a case from the county court to the Land Commission, unless a very strong reason to the contrary be shown: transfer of 9,034 yearly tenancy cases and 1,340 leasehold cases from the county courts from the 22nd August 1881 to the 31st March 1894; 10641–10652.

[Fourth Examination.]—Further information as the number of cases in which appeals have been made from witness' decisions; inclusion of some very important cases in the eighteen decisions that were reversed in favour of the tenants, 10658–10674——Particulars as to the appointment, tenure of office, and removal of the legal and lay Sub-Commissioners, their appointment and removal resting with the Executive; interchangeability of the Sub-Commissioners in regard to the various duties, 10675–10686.

Opinion that the Land Commission have no right to instruct the Sub-Commissioners as to the principles of valuations; issue of printed instructions to them on the conduct of business, 10687–10693——Details as to the various particulars that the Sub-Commissioners

Report, 1894—*continued.*

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

Commissioners have to give on the "pink report;" non-inclusion of the allowance made for occupation right, as the Sub-Commissioners are not instructed as to what extent they are to take prices into consideration, 10694 *et seq.*; 10806–10811.

Contention that the statutory tenure is quite distinct from the occupation right, 10710–10717——Statement that during witness' practice at the Bar the question never arose as to whether the valuations made in court took fair account of the occupation right of the tenant, 10718–10725.

Belief that the paper handed in by Mr. Bailey, showing the exclusions and restrictions, gives a perfectly accurate view of the law, but that it is not exhaustive; exclusion of agistment and conacre lettings from the Act, 10726–10733. 10951 *et seq.*——Great difficulty in ascertaining how many tenants there are in Ireland who would come within the Act; doubt as to there being 486,000 agricultural holdings, 10738–10740.

Experience of witness that the general reason why present tenants do not come into court is because they are getting an abatement, or are in arrear; disbelief in the theory that each case of exclusion warned many others away, 10741 *et seq.*——Necessity of construing the Act of 1881 in conjunction with the Acts of 1860 and 1870; explanation that no judicial decision has created any new ground of exclusion from the Act, 10746–10748.

Reiteration of previously expressed opinion that it would be advisable to amend the law in regard to a certain class of sub-lettings, and as to a number of cases in which tenants are excluded in consequence of a portion of the holding not being within the Act; non-objection to the amount of sub-letting that must not be exceeded being fixed, 10749–10753. 11017–11029—— View of witness that when demesne land that is merely a farm is demised away for ever, it is hardly fair to treat it as demesne land, 10754, 10755.

Repetition of suggestion that in cases where a portion of the holding is non-agricultural, the portion that did not come within the Act should be surrendered, and the fair rent fixed on the residue, 10756—— Reiteration of recommendation that the limit in regard to fair rent on pasture farms might be made 100*l.* instead of 50*l.* valuation, 10758. 11006–11010.

Possibility of a letting for temporary convenience being a letting for "lives," 10759, 10760—— Opinion that if the Land Commission were declared to be a superior court, no greater force could be given to its orders, which already bind all parties concerned; explanation that none of its orders can be questioned except on the ground of no jurisdiction, 10761–10773.

Evidence as to the termination of present tenancies, the tenant's interest not being increased by fixing a fair rent; desirability of there being some record of those cases in which "present tenants" have accepted an increased rent without having any agreement filed, 10774–10788—— View of witness that the fair rent fixed will go on even though the statutory period has come to an end: advisability, however, of explicitly providing that it shall do so, 10788–10790.

Evidence to the effect that a "future tenant" who submits to an increase of rent acquires a statutory term; necessity of another increase or revision of rent in order to constitute a further statutory term, 10791–10805——Information as to the incidence of costs in appeals, the tenant never getting any costs when he appeals; attention drawn to the fact that the landlord only gets costs in the rare cases in which the original rent is restored, 10812–10832. 10918–10920.

Adherence of witness to his opinion that great injustice would be done in individual cases unless the right of appeal be retained, 10833–10844. 10918——Further evidence is to the mode of valuing a farm; contention that no injustice is done to the tenant by the practice of making no deduction for the buildings erected by him, while allowing the landlord a fair sum when the buildings are his, 10845–10852. 11034–11046.

Belief that, notwithstanding what some of the Sub-Commissioners may have stated, the general practice is to take the tenant's occupation right into account when fixing the fair rent; reiteration of previous statement that the question has never been raised judicially, 10853–10904. 10912–10917——Statement that witness has never dismissed a case because of unreasonable conduct on the part of the tenant, the only case brought before him under the Equity Section of the Act of 1881 being one in which he reversed the decision of the Sub-Commission which excluded the tenant, 10905–10911.

Probability that the reason why so many cases are transferred from the county courts to the Land Commission Courts is because the tenants have more confidence in the valuation made by the two Sub-Commissioners; opinion that the county court system of valuation is a bad one, 10921–10931——Ability of a "present" tenant to have a fair rent fixed, although he may have had a number of sub-tenants before 1881, and have already applied and been dismissed, 10932–10940.

Practice of witness' court to fix the true or specified value at what a solvent tenant could give for the holding with a view to making a reasonable profit out of it; no doubt that the value of the tenant's inerest has greatly increased in the open market since

Report, 1894—*continued.*

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

1881; 10941–10951—Evidence to the effect that rents are fixed on mortgaged holdings without any notice being given to the mortgagee, but that he is allowed to intervene at any time, and, if necessary, to have the case re-heard; belief that no practical injustice is done to the mortgagee, 10972–10991.

Exclusion from the Act of holdings that are practically demesne; explanation that witness held that the fee-farm grant of demesne land in the case of Spencer *v.* Tedcastle was not excluded on account of the tendency of decisions up to that time that there ought to be some right of reverter to the landlord, 10992–11004—Definition of a home farm as one that is not mainly worked for profit, 11005.

Desirability of a definition of fair rent being laid down by the Legislature, 11030–11036—Explanation as to the difference between fee-farm grants and long leaseholds under the Redemption of Rent Act, the landlord in case of eviction getting the land back free from claims for compensation in the one case but not in the other, 11047–11069.

[Fifth Examination.]—Costs and inconvenience greater to tenants in going to the Chief Commission than in going to the Sub-Commission, the former only sitting, as a rule, in one town in a county, while the latter hold their courts as near to the litigants as possible, 11070–11077. 11414–11419—Frequent practice of the landlords to refrain from producing valuers before the Sub-Commissions, which often leads to an appeal, causing the tenant to incur double costs, 11078–11080. 11414–11416.

Advantage of the lay Assistant Commissioners being sent to different parts of Ireland and mixing more together, thus securing greater uniformity in the principles of valuation, 11081–11087. 11361. 11412, 11413—Establishment of the Agricultural Department of the Commission, just after the passing of the Act of 1877, for the temporary adjustment of rents, 11088–11090.

Information as to the increase and reduction of the true value in several cases; non-objection to the annual report showing, in future, the true value and other particulars referred to in the Act of 1870; 11091–11098—Grounds for the opinion that the tenant in Harper *v.* Robbins could not claim exemption from rent in respect to the buildings; explanation that a case has been stated for the Court of Appeal, and is still pending, 11099–11112.

Disapproval of the proposal to fix agricultural rents on all town parks; illustration of the working of the provision that the tenant must have been living in the town at the passing of the 1881 Act, 11113–11126—Power of the middleman, in the event of his rent being larger than the aggregate of the rents he receives, to surrender under the provisions of the Act of 1887; 11127–11131.

No doubt that the rents fixed by agreements and declarations a good many years ago are higher than the judicial rents that would now be fixed by a Sub-Commission, 11132–11138—Practice of the Land Commission when fixing a fair rent to reject evidence as to rents that are paid on other portions of the same estate, or on adjoining estates; contention that such evidence does not come within "the circumstances of the case, holding, or district" under Section 8 of the Act of 1881; 11136 *et seq.*

Desirability of checking, if possible, the extravagant prices paid for tenant right in Ireland, 11156 *et seq.*—Inability of the Sub-Commissioners, sometimes, to fix the specified value of a farm, on account of the absence of any reliable evidence as to value, 11166–11172.

Reiteration of the opinion that there are no means of re-fixing the rents at the end of the statutory period by a scale of prices; further details as to witness' suggestion in regard to re-fixing rents, the main object of which is to save enormous expense both to landlords and tenants, 11173–11189—Suggestion that the population limit in regard to town parks should not be a very high one; personal opinion of witness that town parks should be excluded from the Act, whatever limit be adopted, 11190–11194.

Statement that witness has never excluded any holding as being an English-managed estate, 11195—Strong objection to the proposal to subpœna the Sub-Commissioners, with a view to having them examined in court as to the grounds upon which they arrived at an estimate of a judicial rent, 11197, 11198.

Further disapproval of sub-division of a farm among the members of a family, 11199, 11200—Opinion that the Land Commission should not be called upon to give any instructions in valuation to lay Assistant Commissioners and Court valuers; impossibility of laying down any definite rules on questions of law, the only course being to decide each question as it arises, 11201–11210.

Explanation that in the case of Briscoe *v.* Howell it was the Land Commission that decided that the tenant was entitled to a fair rent and the Court of Appeal that excluded him, 11211–11216—Evidence to the effect that the principle that a tenant might be compensated for his improvements by the use and profit of them for a certain time is not now recognised, although the enjoyment of improvements made during the currency of a tenancy

Bewley, Mr. Justice. (Analysis of his Evidence)—*continued.*

tenancy from year to year does compensate to some extent; definition of "enjoyment of improvements" as being in possession of them, 11218 *et seq.*

Statement that any improvements made during the occupancy of a lease are excluded from the rent; belief that on the expiration of the lease also the improvements are exempted from rent, 11242 *et seq.*——Contention that the case of Patrick Moore, on the Villiers Stuart estate, is quite different from that of Adams *v.* Dunseath, coming under the last clause of Section 4 of the Act; explanation that the court held that improvements made by the tenant before the granting of the lease passed to the landlord, 11251 *et seq.*

Absence of any practical grievance, although there may be a theoretical one, in the tenant having to instruct his legal adviser to come into court and put a stay upon any proceedings of the landlord to eject him, in cases that are transferred from the county courts to the Land Commission, 11272–11282——Further information respecting Moore's case, showing that the tenant was very ill-advised in serving an originating notice, the result being that his rent was raised from 18*s.* 9*d.* to 30*s.*; non-inclusion of the improvements in the valuation in this case, 11272–11334. 11414–11419.

Irregularity of Mr. Gray in deducting 15 per cent. in each case for occupation interest; absence of anything in the records of the Land Commission, or in any reported case, to show that any specific allowance has ever been made for occupation right, 11335–11342——Non-objection to the improvements established by the evidence, and the value assigned to them in the settlement of the rent, being distinctly specified; grounds for the opinion, however, that, if evidence of improvements is to be preserved by endorsement on the order, legislation will be necessary, 11343–11357.

View of witness that the landlord at the expiration of the statutory term is estopped from denying the present tenancy; extension of this view to cases where no legal question or objection was raised by the court below, 11362–11383——Agreement of witness with the provision under which the tenant gets no costs when he succeeds in getting his rent reduced in the Sub-Commission Court, 11384–11395.

Probability that the reason why the Land Commission cases did not appear in the authorised reports formerly was that there were so many other cases to be reported that there was no room for them, 11396–11404——Explanation as to the unfair state of the law, referred to by Lord Justice Christian as a *reductio ad latrocinium*, under which a person who assigns a leasehold or makes a sub-letting can himself bring an action for recovery and ejectment, 11405–11411.

Bloomfield Estate. Explanation that in the case of the ejectment of a tenant named Brown on Lord Bloomfield's estate, the landlord preferred a Protestant tenant to succeed in order that the church might be kept open for the few Protestant tenants in the district, *Garvey* 12040–12047. 12144–12146.

Disclaimer by witness of any knowledge of a case on Lord Bloomfield's property in which it is alleged that a man who built a limekiln on his farm, and drew limestone three or four miles to it, was stopped because he had not first obtained permission, and that the land had to lie waste for a year, *Garvey* 12080–12082. 12110–12117.

Bog Land. Examination respecting bog holdings in Connaught improved entirely by tenant labour, there being in some cases no element of improvability to the credit of the landlord; instances of such holdings let at 10*s.* an acre and upwards, the tenants being fairly entitled to a large reduction, *Bayly* 4355–4400.

Great variation in the amount of labour and expense incurred in the reclamation of bog lands in different districts, *MacAfee* 5613–5616——Reference to the numerous cases of dispute arising from the reclamation of bog land; suggestion that such cases might be dealt with by the Chairman of the Sub-Commission, *Greer* 8216–8223.

Boundaries. Great importance attached to a map showing in each case the boundaries of the holding, *Bailey* 696–702——Record made by the lay Sub-Commissioners of boundaries, these being correctly supplied by the tenant in the vast majority of cases, *Bayly* 3535–3546—— Experience of witness that mistakes as to boundaries have been made by the Sub-Commissioners and corrected by the Head Commission, *Barnes* 13005–13008.——*See* also *Maps.*

Briscoe v. *Howell.* Explanation that in the case of Briscoe *v.* Howell it was the Land Commission that decided that the tenant was entitled to a fair rent and the Court of Appeal that excluded him, *Bewley* 11211–11216.

BUILDINGS:

Separate valuation by each Sub-Commission of the soil and of the buildings, the fair letting value of the latter being added to the rent when they are provided by the landlord, but not when they are provided by the tenant, *Fitzgerald* 61–69; *Bailey* 0.122.

BUILDINGS—continued.

1499-1506; *Bayly* 3976-3985. 4067-4079—Presumption in favour of the tenants as regards not only all improvements since 1870, but as regards buildings, &c., evidently erected by the tenant previously thereto, *Bailey* 2760-2763——Statement on the subject of witness' Sub-Commission valuing the land and buildings separately, even though the latter are all provided by the landlord; necessity of showing in each case the annual value of the buildings, *ib.* 2766-2779.

Usual practice of valuing each holding as it stands according to the knowledge and experience of the individual valuers, the buildings being valued separately, *Doyle* 2867-2871. 2898-2901. 2924——Practice as regards buildings in respect of allowance to the tenant or the landlord, respectively; admitted claims of tenants, as a rule, in Ulster, whilst elsewhere the claim is often made by the landlord, *Bayly* 3618-3623——Practice of witness to exempt from rent in all those cases in which it is undoubted that improved buildings were at the cost of the tenant, though there may not be actual evidence to that effect, *ib.* 3767-3777——Frequency of landlords making no claim in respect of buildings, there being very often no controversy on the question, *ib.* 3986-3993.

Opinion that the presumption in favour of the tenant in regard to buildings and the reclamation of waste land should be allowed to go back any distance of time, *MacAfee* 5498-5509——Doubt as to there being any danger to the tenant in the process by which the holding is valued apart from the buildings on it, and the letting value of the buildings, if they are the landlords, added, *ib.* 5729-5735——Evidence to the effect that landlords' improvements are included in the valuation for rent and that landlords are only allowed for such buildings as are suitable to the holding in an agricultural sense, *ib.* 6318 *et seq.*

Statement that there have been cases in which, in consequence of the law as to presumption, buildings undoubtedly made by the tenant have had rent put on them for the landlord, *Doyle* 6883, 6884——Explanation that the almost universal practice in valuing land in Ireland is to value it as if there were no buildings on it and then to add the rent for the buildings, if any; general presumption that the buildings were made by the tenant, *ib.* 6951-6980. 6999-7001. 7048, 7049——Opinion that it is open to the Sub-Commissioners under the Act to put rent on houses that are too good for the holding, although made by the tenants, *ib.* 7333-7338.

Statement that in fixing rents it is not usual to allow for any buildings made by the tenant unless so far as the outlay is suitable, *Greer* 8521-8532——Difficulties of the method of valuing land apart from the buildings thereon; suggestion that the whole shou'd be included in the valuation, but that the value of any buildings belonging to the tenants should be afterwards deducted, *ib.* 8593-8604——Reference to the case of Mr. Harper (a solicitor in Belfast), in which the question was raised as to whether rent should be charged on buildings erected before the granting of the lease, *ib.* 8696-8703.

Discussion as to the fairest method of making a valuation in regard to buildings; practice of witness to make a note of the buildings on a farm, but to place no value on those which are claimed by the tenant, *Heard* 9325-9330. 9337, 9338. 9404-9410. 9761-9783. 9911-9915. 9940-9944.

Contention that no injustice is done to the tenant by the practice of making no deduction for the buildings erected by him, while allowing the landlord a fair sum when the buildings are his, *Bewley* 10845-10852. 11034-11046——Argument that in valuing a farm it is better to value the land without the buildings and then add the buildings, if necessary, than to value the whole as a going concern and deduct the buildings when they belong to the tenant; certainty that the landlord does not get rent twice over for the buildings, *Neligan* 11760-11783.

Statement that the tenants generally claim all the buildings on a holding, and that their claim is not usually disputed by the landlords; allowance made, when the holding is valued, for the cost of maintaining the buildings, *Garvey* 11880, 11881. 12227-12244——Experience of witness that in fixing fair rents the smaller buildings are not rented higher than the larger ones, *ib.* 12332-12334——Grounds for the argument that witness, in his valuation of a holding for fair rent, does give the tenant credit for the buildings, *ib.* 12629-12663.

Enumeration of estates on which the landlord either erects the buildings or contributes materials towards them; allowance to the landlord of not more than 4 per cent., in such cases, when fixing the fair rent, *Barnes* 12864-12866. 12879-12881——Custom of the landlord not to claim for the buildings unless he has a substantial reason for doing so, *ib.* 12873.

Review by the Committee of the law and practice as regards the valuation of farm buildings, with reference to the question of their being considered in the rent; conclusions and recommendations on the subject, *Rep.* ix-xv.

See also *Improvements. Robb* v. *Downshire.*

C.

Care-takers. Question as to the large number of "care-takers" in Galway who owe six or seven years' rent, and who, unless they pay off that arrear within six months, can never redeem and become "present tenants"; suggestion that the only remedy for these cases of peculiar hardship would be for Parliament to deal with them as with the crofters, *Greer* 8179–8192. 8224–8242.

Cavan. Evidence as to appeals from witness' tribunal, with special reference to rents fixed in Cavan: qualifications of the two appeal valuers, Mr. Bamford and Mr. Callan, a large number of these rents having been raised by the Chief Commission, *Bailey* 1837–1850.

Examples of cases where fair rents have been recently fixed in which settlements had been agreed to between the parties after the passing of the Act of 1881 reducing the old rents, *App.* 693.

Civil Bill Courts. See *County Courts.*

Clerks of the Peace. Very faulty way in which the orders are made out for the county court judges by the clerks of the peace; recent complaint by the Commissioners on the subject, *Fitzgerald* 203–209.

Compensation for Tenants' Improvements. See *Improvements.*

Competition Rent. Distinction drawn between competition rent and fair rent, the former being in excess of the latter, *Doyle* 2873–2875. 2877–2888. 2910.

See also *Fair Rents. Specified Value and True Value.*

Conacre. Statement as regards the case of McNamara *v.* McNamara in which the Court of Appeal decided that land let in conacre was not used as an ordinary agricultural holding, *Bailey* 2241–2249.

Conroy v. Drogheda. Statement on the question of the judgment (not officially reported) of the Lord Chancellor in the case of Conroy *v.* Drogheda having reversed or confirmed a previous decision in the case of McDonnell *v.* Blake, *Bailey* 2101–2107—— Explanation with further reference to the case of Conroy *v.* The Marquis of Drogheda, the effect of the judgment (recently reported in the "Law Times") being that it is quite possible to determine a present tenancy if the parties have the intention so to do and without resumption of the holding by the landlord, *ib.* 2172–2182. 2198–2213. 2222–2228. 2809–2823.

Particulars of the case of Conroy *v.* Drogheda, which derives its importance from the judgment, that no present tenancy shall be determined until possession is surrendered, *FitzGibbon* 3479–3483. 3489. 3492.

Consolidation of Acts. See *Acts of Parliament.*

Consolidation of Holdings. Question in the case of Jackson *v.* Hagan as to whether the consolidation of holdings and the alteration of rent constituted a future tenancy, *FitzGibbon* 3484–3487.

Contract. Opinion that the fixing of a fair rent is only justified by the fact that the tenant is not in a position to contract freely with his landlord, *Shaw* 8923–8927. 8973. 9197–9203 —— Importance of the Act of 1860 in making the relation of landlord and tenant depend entirely on contract, *FitzGibbon* 2977.

Reference by the Committee to the Act of 1860 as regulating the relation of landlord and tenant on the basis of contract, and as not investing the status of the tenant with any legal privileges, *Rep.* iii.

Conyngham v. Boyle. Details of the case of Conyngham *v.* Boyle, which involved a modification of the Ulster custom, *Greer* 8717–8722.

Costs:

1. *Applications for Fair Rents.*
2. *Appeals and Re-hearings.*

1. *Applications for Fair Rents:*

Approval on the whole of the system whereby in fair-rent cases no costs are given save under exceptional circumstances, *Fitzgerald* 360–375——Large proportion of costs in the smaller cases, *ib.* 586–593.

Schedule of costs laid down by the Land Commission in connection with applications by tenants; regulation also of the fees for professional valuers, *Bailey* 1279–1283—— Solicitor's fee of 10*s.* when the rent stated in the originating notice does not exceed 5*l.*, *ib.* 1279, 1280—— Large number of small cases heard without solicitors, *ib.* 1281.

Practical effect of the decision in the case of Adams *v.* Dunseath that as regards the costs of each application, the landlord and the tenant each pays his own, though in almost every case the tenant succeeds in obtaining a reduction of rent, *Bailey* 1397–0.122.

Report, 1894—*continued.*

Costs—continued.

1. *Applications for Fair Rents*—continued.

1405——Fairness in each party paying his own costs even when the tenant obtains a reduction of rent, *Bailey* 2576–2578.

Average cost of 30*s.* to the tenants in a number of very small cases before witness; inconvenience and loss of time in coming to the court, *Bayly* 3921–3929——Long-established practice as to the tenants paying their own costs, whether they win or lose, so that they have become reconciled thereto; opinion that the costs should follow the decision, *ib.* 4042–4046. 4173–4175.

Experience of witness that tenants are not deterred from coming to court by fear of costs; information as to the incidence of costs of re-hearings, *Bewley* 10508, 10509. 10620–10632——Agreement of witness with the provision under which the tenant gets no costs when he succeeds in getting his rent reduced in the Sub-Commission Court, *ib.* 11384–11395.

View of witness that the fact that costs are not given to the "successful party" is not a matter of complaint, the fixing of a fair rent not being a hostile law-suit; belief that the tenant's costs in witness' court are very small, *Neligan* 11506–11510——Opinion that the question of cost does not deter tenants from going into court, *ib.* 11510–11518; *Barnes* 12983–12985.

Estimate that the average cost to the landlord of having a fair rent fixed is from 6*l.* to 8*l.* a case in the Sub-Commission Court; complaint by tenants that they cannot get through the court for less than 3*l.*, *Garvey* 12388–12393. 12504–12509.

Memorandum as to the cost of application to fix a fair rent, distinguishing between cases over and under 5*l.*, *App.* 677.

Comment by the Committee upon the heavy costs; calculation that a year of the benefit gained by average reduction of rent is swallowed up by the cost of the action, *Rep.* xxi.

2. *Appeals and Re-hearings.*

Heavy pressure of the costs in small appeal cases where the valuation is under 10*l.*, *Fitzgerald* 586–593——Numerous instances in which the landlord as well as the tenant appeals, each paying his own costs in such cases, *Bailey* 1406–1414. 1420, 1421.

Reluctance of tenants to appeal on account of the costs, *Bayly* 4183–4189——Reference to the rule as to costs when a judicial rent is fixed and the tenant appeals, *ib.* 4351–4354. 4477.

Information as to the incidence of costs in appeals, the tenant never being awarded any costs when he appeals; attention drawn to the fact that the landlord only gets costs in the rare cases in which the original rent is restored, *Bewley* 10812–10832. 10918–10920——Frequent practice of the landlords to refrain from producing valuers before the Sub-Commissions, which often leads to an appeal, causing the tenant to incur double costs, *ib.* 11078–11080. 11414–11416——Estimate of from 6*l.* to 8*l.* as the average cost to the landlord in appeal cases, *Garvey* 12394–12412. 12510–12513.

Very similar costs of appeal as of a hearing before the Sub-Commission, *App.* 677.

Estimated cost of at least 250,000*l.* in connection with 21,847 re-hearings and appeals since the Act of 1881, *Rep.* vi—— Extremely heavy costs in small cases, *ib.* xxi.

See also *Valuers and Valuation.*

County Cess. Evidence to the effect that county cess, which varies considerably in the various counties of Ireland, is always considered in fixing a fair rent, *MacAfee* 5540–5544. 5715–5729.——*See* also *Rates and Taxes.*

County Courts:

1. *Jurisdiction and Procedure as regards Valuation and the Fixing of Fair Rents.*
2. *Transfer of Cases from the County Courts to the Sub-Commissions.*
3. *Suggestions for an amended Practice as regards Valuers, &c.*
4. *Reductions of Rent in cases in the Courts.*
5. *Summary and Recommendations by the Committee.*

1. *Jurisdiction and Procedure as regards Valuation and the Fixing of Fair Rents:*

Commencement of proceedings in the county courts by an originating notice, there being a list of county court valuers to whom the judges can refer the matter for report; payment of these valuers by the Treasury, *Fitzgerald* 11–13. 194–202——Varying practice of different county court judges as to the procedure, *ib.* 201——Jurisdiction of the county court judge in lease cases under the Act of 1887, *ib.* 211, 212——Due consideration given by the county court judge to the evidence and to the valuer's part in fixing the rent, *ib.* 631.

Obligation upon the county court to accept the legality of the decisions of the Land Commission, unless such decisions are over-ruled by the Court of Appeal, *Shaw* 8875, 8876——

COUNTY COURTS—continued.

1. *Jurisdiction and Procedure as regards Valuation, &c.*—continued.

8876——Statement that decisions on land cases form a very subordinate part of the work done by witness, *Shaw* 8879-8881——Opinion that the jurisdiction of the county court is co-ordinate with that of the Sub-Commission, *ib.* 8928, 8929.

Detailed evidence showing the procedure employed in fixing a fair rent; explanation that every step in the case is duplicated by the clerk of the peace keeping one set of notices and orders, and forwarding copies to the Land Commission Court, *Shaw* 8974-8978.

Practice of the county court judge to consider the details of the report submitted by the valuer previous to hearing the evidence of the landlord and tenant, *Heard* 9276-9286. 9382-9385. 9852——Evidence showing that Judge Neligan frequently considers the case for some days before giving a decision, and that such decision is not always in accordance with the report of the valuer; reference hereon to Judge Shaw's method of procedure, *ib.* 9287-9294. 9300-9305——Examination as to the difference in the form of report used by the Sub-Commission and that in use in the county court, *ib.* 9717-9727.

Details as to witness' procedure in adjudicating on land cases, his endeavour being to form an independent judgment as to value in each case, and not to rely on the report of the court valuer, *Neligan* 11440-11458. 11535 *et seq.*; 11723-11745. 11760-11783. 11835-11845.

2. *Transfer of Cases from the County Courts to the Sub-Commissions:*

Conditional right of transfer to the Land Commission Courts, when the proceedings have been initiated in the county courts, *Fitzgerald* 11-13——Considerable delay formerly in connection with the transfer of the proceedings to the Sub-Commissioners, *ib.* 13——Large number of applications for transfer, these being generally granted, *ib.* 14-16.

Reference to the number of cases withdrawn from the county courts on the appeal of the landlord, and transferred to the Sub-Commissions, *Shaw* 9018-9022. 9052, 9053. 9096——Examination as to the cause of so many cases being transferred from the county court to the Land Commission; probability that it is owing to the objection of the landlords to having but one valuer, *Heard* 9486-9492. 9603-9612.

Right of either party to transfer a case from the county court to the Land Commission, unless a very strong reason to the contrary be shown; transfer of 9,034 yearly tenancy cases and 1,340 leasehold cases from the county courts from the 22nd August 1881 to the 31st March 1894, *Bewley* 10641-10652——Probability that the reason why so many cases are transferred is because the tenants have more confidence in the valuation made by the Sub-Commissioners; opinion that the county court system of valuation is a bad one, *ib.* 10921-10931.

Evidence to the effect that during the two years that witness has been county court judge he received 207 originating notices to have fair rents fixed, fifty-two of which were transferred to the Land Commission; there were appeals in thirty-eight of the 155 cases heard, *Neligan* 11431-11439. 11698-11712.

3. *Suggestions for an amended Practice as regards Valuers, &c.:*

Opinion as to the hardship of a judge having no option but to adopt the report of the court valuer in regard to the amount of fair rent, and to sign, as his judgment, a decision of which he has no knowledge; contention hereon that the county court judge is placed in a more difficult position than the legal Sub-Commissioner, *Shaw* 8987-8990. 9032-9043——Inadequacy of the arrangement by which the county court is allowed to send one valuer only to fix a fair rent, whilst the Land Commission send two; probability of this being the cause of the great number of cases on the Kenmare Estate being withdrawn from the county court, *ib.* 9030-9032. 9049. 9186. 9234-9242——Opinion that the power of the county courts to fix rents should be abolished, unless two permanent salaried court valuers be appointed, *ib.* 9053-9059.

Suggestion that it would be an advantage if cases were heard in Court prior to the valuer's inspection of the property, *Heard* 9494-9499——Belief that the county court decisions would command more outside confidence if there were two valuers instead of one, *Neligan* 11448-11450. 11542, 11543——Desirability of the court valuers being made permanent officials, and the county court put as much as possible on the same footing as a Sub-Commission, in order to make it a suitable court for the revision of rent, *ib.* 11451-11453.

Letter from Mr. Justice Bewley to the Lord Chancellor, dated 24th March 1894, with reference to the number of applications to fix judicial rents pending in the Civil Bill Courts, and the amended regulations desirable on certain points, *App.* 666.

4. *Reductions of Rent in cases in the Courts:*

Return according to provinces and counties showing the per-centages of reduction in cases in the Civil Bill Courts since the commencement of proceedings, *App.* 739, 740.

COUNTY COURTS—continued.

5. *Summary and Recommendations by the Committee:*

Total of 34,453 originating notices lodged with the county courts since the Act of 1881, of which number no fewer than 10,374 were transferred to the Sub-Commissions, *Rep.* iv——Application for transfer usually made by the landlord, *ib.*——Total of 15,537 fair-rent cases settled by the county courts since the Act of 1881, *ib.*

Review of the proceedings in the courts with reference to the per-centage of reduction of rents; larger average reduction than in the Land Commission Courts, *Rep.* iv, v.

Reference to the comparatively small number of cases heard in county courts, *Rep.* xx——Illustrations of the want of uniformity of practice on the part of different judges, *ib.*

Recommendation that in order to conduce to conformity the county court valuer, having first attended the hearing of the case, should then inspect the holding and report thereon, and that judgment should be given in the case at the ensuing sessions, *Rep.* xx.

Reference to the delay and inconvenience caused by the transfers *ex parte*, on the application of the landlord, of fair-rent applications from the county courts to the Sub-Commissions, *Rep.* xx——Recommendation that such transfers should not be allowed except for substantial cause assigned, and with restrictions on proceeding for the old rent in the interval before judgment, *ib.*

See also *APPEALS AND RE-HEARINGS. Clerks of the Peace. FAIR RENTS. IMPROVEMENTS. VALUERS and VALUATION*, 2.

Cowper, Earl. Quotation of opinion expressed by Lord Cowper to the effect that improvements were usually made by the tenants, and that in many cases the rent had been raised on such improvements, *Rep.* xiii.

Crookshank v. *Law.* Admission with respect to the decision in the case of Crookshank *v.* Law that some additional land taken by the tenant was not required for agricultural purposes, *Bailey* 2229-2234——Explanation with further reference to the effect of the decision in the case of Crookshank *v.* Law as regards exclusion from the Act where a small portion of land is held to be taken for non-agricultural purposes, *ib.* 2341-2345.

Particulars of the case of Crookshank *v.* Law in which the decision of the Recorder of Derry was reversed by the Land Commission, and the decision of that body reversed by the Court of Appeal, *Fitz Gibbon* 3037-3092.

Cunningham, John. (Analysis of his Evidence.)—Position of witness in the Land Commission as resident inspector in connection with the Purchase Department; previous official experience throughout Ireland as an Assistant Lay Commissioner and Special Court Valuer, 4478-4486. 4490-4495——Long experience of witness as a farmer in Ireland, 4487-4489.

Practice of witness, when Assistant Commissioner, to deal alike with larger and smaller improvements by tenants, subject to the rule of their being excluded if not proved in court, 4496, 4497——Frequent allowance by witness of 5 per cent. upon the tenant's outlay, this fully representing the increased letting value through his improvements; very general allowance also to the tenant of any excess above 5 per cent., as in exceptional cases, 4498-4506——Considerable amount of drainage on which the return or the allowance would not exceed 2 per cent., 4506.

Due consideration given by witness, when fixing a fair rent, to the value of the holding in its wild state, and, in the case of bog land, to the facilities for its drainage and improvement, 4507-4509——Practice of witness to value the holding as it stood, without reference to any latent qualities in the soil which might under treatment produce an increased value, 4511, 4512.

Information on the subject of turbary, witness referring to some exceptional cases of hardship to tenants, and suggesting that in any amendment of the law a remedy should be provided, 4512-4520——Powerlessness of the Land Commission to prevent an undue charge for turbary when outside the ambit of the holding; restriction desirable, 4516-4520.

Consideration given by witness to the subject of prices as one of the factors in arriving at the fair rent, 4521-4523.

Grounds for the conclusion that the necessity of giving legal proof of improvements often imposes hardship and injustice upon tenants; difficulty through the absence of records, 4524-4529——Expediency of the presumption as to improvements being always in favour of the tenant, 4530-4532——Opinion that the Ulster custom has not had the effect of lowering rents, 4533.

[Second Examination.]—Explanation as to witness' views on the question of improvability; agreement with the principle laid down by Mr. Bailey that in dealing with increased

Report, 1894—*continued.*

Cunningham, John. (Analysis of his Evidence)—*continued.*

increased letting value, and the interest that ought to be allowed to the tenant for it, the controlling element is the durability of the improvement, 4534-4544——Evidence to the effect that witness values improvements in exactly the same way whether he is acting as Appeal Court valuer or as an ordinary lay Sub-Commissioner; details as to his *modus operandi*, his action being quite independent and free, 4554 *et seq.*; 4663-4687. 4840-4855. 4876-4891. 4906-4939. 4975-4992.

Statement that when witness has drawn up his report and sent it to the Chief Land Commissioners he has no further communication with them; return of his report for further particulars in one instance only, 4575-4578——Recommendation that the duty of the Land Commission should be more confined to the fixing of a fair rent and that questions of title, status, administration, &c., should be excluded from the consideration of the Commissioners, 4579-4581. 4892-4894.

Strong inclination of witness to let the decisions of the Sub-Commission be final on questions of value, the average alteration made in the process of appeals, which is costly, having only been 2; 4582, 4583. 4847-4855——Decided opinion that the statutory period of fifteen years is too long; suggestion that it should be only seven years, 4584-4595. 4648-4651.

No doubt that the rents fixed by the Land Commission between 1881 and 1887 are now too high and will be subject to a serious reduction when they fall in; statement hereon that the fall in the prices of agricultural produce has been considered in fixing rents, especially since the year 1885; 4596-4601. 4641-4662. 4708-4735. 4953-4969. ——General concurrence of witness with Mr. Bailey's proposals as to fixing fair rents; suggestion, however, that the first procedure might be left to the landlord and tenant in all cases, with an appeal within a month to a full Sub-Commission, 4601-4606. 4750 *et seq.*; 4868-4875.

Numerous cases in which agreements between landlords and tenants have not been registered and when re-valued the rents have been reduced; belief that sub-letting and sub-divisions are the chief elements in excluding tenants from the operation of the Act, 4605-4620. 4793-4801 ——Difficulty of the tenants in furnishing legal evidence of their improvements; although the presumption of improvements is in their favour in theory, they are not much relieved by it in practice, 4621-4630. 4688-4707. 4769-4778.

Necessity of taking the increased cost of labour into account in recent rent-fixing; complaints as to scarcity of labour in County Down, 4631, 4632. 4856, 4857—— Practical experience of witness that farming has not been a profitable employment of late; information as to his two holdings, which consist of about 150 acres in all, 4633-4640.

Non-objection of witness, personally, to tenants being informed, in cases of appeal, of the full letting value that has been fixed, the amount allowed off for improvements, and the fair rent; belief, however, that it would immensely increase the work without giving any compensating advantage to the tenants, 4675-4687——Explanation that, in witness' experience, the Ulster custom tenant has to prove his improvements like any other tenant, and that if he had to prove the custom he would have a more difficult task than proving the improvements themselves, 4688-4707. 4779-4827.

Doubt as to the tenant having the value of one-third of his gross produce to live upon after paying all outgoings; belief that he only has about a fifth or a sixth, 4711-4735 ——Advisability, in view of the present state of agriculture, of applying the reduction of the statutory term to the cases of those tenants who had their rents fixed up to 1885; 4708-4734.

Recommendation that the fixing of a specified value should be abolished, and that the value should be ascertained in the ordinary way by public sale; denial that there is any laxity in fixing either "specified" or "true" value, 4735-4740——Probability that the majority of the 168,000 tenants who have not come to the court to have fair rents fixed under the Act have got some temporary arrangement or reduction; no doubt that in some cases they were deterred from coming by the cost of the procedure and fear of the results, 4740-4744. 4970-4974.

Decided opinion that the effect of fixing the judicial rent is to make the landlords in the district concerned lower their rents in the cases in which they are not fixed in court, 4745, 4746. 4858-4867——Desirability of the court having power, in fixing a fair rent, to deal with arrears, as in Scotland, and to take cognisance of tunbary, where it exists anywhere upon an estate, 4747-4749.

Approval of the principle of the impregnability of a fair rent; necessity of freeing the administration of the law from all technicality and legal exclusions, so as to enable all parties to see exactly where they stand, 4750-4768. 4993, 4994——Experience of witness that, in regard to the vast bulk of cases of reclamation and drainage in Ireland, a fair allowance to the tenant to recoup him for his improvements has, as a rule, practically exhausted the letting value of the improvements; unfairness of landlords' claims for any part of the improved letting value, 4769-4778.

Report, 1894—*continued.*

Cunningham, John. (Analysis of his Evidence)—*continued.*

Belief that in fixing a fair rent seaweed cannot be included without the landlord's consent; constant complaint of the poorer farmers on the Mourne coast of County Down that they can get no seaweed on account of one particular landlord often having the right to the foreshore all along the county, 4828-4836——Endeavour of witness to make due allowance for the time of year at which he sees the farms when valuing them, 4837-4839.

Statement that improvements are generally done by the tenants unaided, but that on many estates the landlords do the improvements, as on those of Lord Leconfield, the Duke of Devonshire, and the Duke of Leinster, 4895-4905. 4940-4952.

[Third Examination.]—Explanation that witness' replies to Questions 4688-4691, respecting tenants' improvements, referred to improvements other than buildings, 4995.

No doubt that the Commissioners when fixing rents between 1881 and 1887 were influenced by the previous twenty-five years of steady improvement, and were not prepared for a drop in prices so soon as five years afterwards; distinct and progressive decline in prices since 1885; 4996-5008. 5254 *et seq.*; 5338-5343——Disinclination of witness to take Griffith's valuation as a safe guide, it being only suitable for rough and general purposes, 5009-5030. 5347-5349.

Grounds for the opinion that, although 5 to 8 per cent. is a fair allowance upon tenants' improvements on the land, 5 per cent. would be too high an allowance to give the landlord for the repair of a house, 5030-5038——Belief that the upward tendency of the prices of tenant-right outside Ulster, since the passing of the Land Act, has been checked by the drop in agricultural values, 5039 *et seq.*

Adherence of witness to his formerly expressed view as to the prejudicial effect of the landlord's right of pre-emption upon the tenant, and to the recommendation that the fixing of the specified value should be abolished; right of the tenant to sell in the highest market, 5044-5059. 5107-5117.

Further information as to the hardship imposed upon tenants by the necessity of giving legal proof of their improvements; opinion that the presumption of improvement should be given entirely in favour of the tenant, with certain safeguards, 5060-5083. 5155 *et seq.*; 5344-5346——Explanation that in the two cases in which an increased charge for turbary was made, after a reduction of rent by the Land Commission, there was no intention on the part of witness to convey the impression that the landlords went behind the back of the Sub-Commission and recouped themselves after a fair rent had been fixed, 5084-5100. 5118-5132.

Advisability of valuing each holding separately when re-fixing rents that have been in force for fifteen years; opinion that the prices that may have been given for the tenant-right should not be allowed to affect the valuation, 5101-5106——Practice of witness in fixing fair rents to protect the tenants' improvements as much as possible; difficulty of increasing the annual letting value on the average Irish farm without great expenditure, except in the case of very wet or peaty land, 5133-5154.

Statement that witness has dealt with all improvements on the same principle, not having made any distinction between major and minor improvements, 5152-5154——Suggestion that, in fixing the date behind which no improvement as regards fences should be considered, it would be better to take 1840 or 1846 than 1850; 5232-5249.

Opinion that the question of fair rent would not be affected by the kind of grass seed a farmer put in, whether the better and expensive, or the inferior, grasses, 5250-5253——Explanation that the chief reason why witness advocates that rents should only be fixed for seven instead of fifteen years is that in case of fluctuations there would be less risk of injury to either side, 5320-5329——Impossibility of laying down a fixed rule as to the proportion which the rent of a holding ought to bear to the gross produce, 5330-5336.

D

Dairy Farms. Probability that a farm that was very productive as a wheat-growing farm would also be extremely valuable as a dairy-farm; opinion, however, that dairy-farming is not a profitable occupation, *O'Keeffe* 6579 *et seq.*——Extreme difficulty of getting, by any system of statistics, any good idea as to how the prices of dairy produce affect the farmer, *ib.* 6592-6607.

Practice of the said Commission not to exclude dairy farms from the benefits of the Act; the practice has not as a rule been questioned, *Bewley* 10377-10379. 10416, 10417——Explanation that in the only dairy farm case that witness had to deal with he did not fix a rent, as it was one of the exempted cases, *Neligan* 11478-11488.

Conclusion of the Committee that dairy farms should not be excluded from the Land Acts, whatever might be the valuation, *Rep.* xix.

Dartrey

Report, 1894—*continued.*

Dartrey Estate. Explanation that in the case of a reduction of one of Lord Dartrey's rents from 22*l.* 7*s.* 6*d.* to 12*l.* the question of sub-letting did not arise as there was no evidence of it before the Court, *MacAfee* 5575 *et seq.*

Delay. Information respecting the course of procedure and the excessive delay in a case in which a tenant named John Sullivan, of Bantry, served an originating notice in December 1888 for fixing a fair rent; reduction not finally settled till June 1893, no allowance having been made for rack rent paid over a period of thirty-two years, *Fitzgerald* 325–359.

Immense number of outstanding applications to fix fair rents when witness became a Land Commissioner in 1890, *Fitzgerald* 336, 337——Excessive delay formerly before judgments were obtained, this having now disappeared, *ib.* 526–528. 631–636.

Great complaints some years ago as to the delay in hearing cases; prompt hearing of late, *Bailey* 1284.

Demesne Land:

Exclusion of demesne lands from the operation of the Land Acts; questions decided in connection with undemesning, *Bailey* 985–993——Explanation of the recognised meaning of the legal term "demesne;" such meaning will not accord with the wording of the Act of 1881, *FitzGibbon* 3098–3102——Decision of the Court of Appeal in the case of Griffin *v.* Taylor on the subject of demesne land, *ib.* 3102–3106.

Peculiarity of the case of Wagner *v.* Hawkes where certain land was originally let as agricultural and not demesne land; decision by four out of five judges that the land in question was demesne land, *FitzGibbon* 3107–3114——Reference to the case of Prall *v.* Gormanstown, in which a piece of land was decided to be demesne although held from year to year, *ib.* 3115–3121.

Details respecting the case of Benson *v.* Listowel; decision of the Court that a farm consisting of demesne and other land was agricultural in character, *FitzGibbon* 3121——Explanations also in connection with the case of Watson *v.* Abercorn, *ib.* 3121–3125. 3166, 3167.

View of witness that where land, or a considerable portion of it, has been used for agricultural or pastoral purposes, it should be treated as an ordinary agricultural holding, whether called demesne land or not, *O'Keeffe* 6238–6246——Grounds for the opinion that "once demesne land, demesne land for ever," is not the rule; agreement, however, that it may be demesne land for ever, although the landlord never has the right of taking it back again, *Doyle* 7298–7304.

Effect of the Court of Appeal judgments that the mere fact of demesne lands being granted by fee-farm grant, or demised by lease for a very long time, is not sufficient to deprive them of their character of demesne lands, *Bewley* 10345–10355. 10480, 10481——View of witness that when demesne land that is merely a farm is demised away for ever it is hardly fair to treat it as demesne land, *ib.* 10754, 10755.

Exclusion from the Act of holdings that are partially demesne; explanation that witness held that the fee-farm grant of demesne land in the case of Spencer *v.* Tedcastle was not excluded, on account of the tendency of decisions up to that time that there ought to be some right of reverter to the landlord, *Bewley* 10992–11004.

Return explanatory of the exclusion of demesne lands, *App.* 681.

Review by the Committee of the provisions in the Act of 1881 as affecting the law under the Act of 1870 in respect of demesne lands; conflicting decisions as to the interpretation of the term, *Rep.* xviii.

Deterioration of Holdings:

Particulars with reference to the procedure of the lay Sub-Commissioners in valuing a farm, and in dealing not only with improvements, but with deterioration, *Bailey* 1925 *et seq.*; 1983–2001——Several modes adopted in estimating the amount of deterioration that sometimes results from bad treatment, *ib.* 2584–2586——Great difficulty in estimating deterioration of the soil, this matter being determined by the lay Sub-Commissioners, *Doyle* 2876. 2930–2934.

Frequent instances of deterioration of the land, as through over cropping, exhaustion of drainage, &c., *Bayly* 3730–3734——Practice of witness in fixing the fair-rent to value the land, as he sees it, according to his practical experience of what it is worth, the tenant being allowed no deduction for deterioration if wilful on his part, *ib.* 3819–3824. 3842–3857. 3876–3879. 4172.

Endeavour of witness, in cases of deterioration, to value the land as near as possible at what should have been its normal value, *MacAfee* 5606–5608——Statement that deteriorated farms are valued as if they were in a fair condition, in order that the tenant may not profit by any act of wilful deterioration; prejudicial effects of "burning" "liming," &c., on the soil, *O'Keeffe* 6341–6347. 6382–6395. 6471–6487——Reiteration of previous statement that where deterioration of land was the deliberate act of the tenant it was not allowed for in fixing the fair-rent, *ib.* 6639–6641. 6833–6835.

Report, 1894—*continued.*

DETERIORATION OF HOLDINGS—continued.

Evidence to the effect that in the case of deterioration the rent is fixed as if the land was in good condition, *Roberts* 7680-7683——Invariable practice of witness to make the tenant pay for any case of deliberate deterioration, *Greer* 8815-8817. 8821——Infrequency of cases of wilful deterioration; instance of a case in which a tenant's rent was raised owing to wilful deterioration being proved against him, *Heard* 9378-9381. 9572-9577.

Evidence to the effect that where a holding has been deteriorated by the tenant the fair rent has been fixed on the land as the valuer saw it; feeling, however, that a hardship is done to the landlord in such cases, *Neligan* 11655-11671——Impression that the Sub-Commissioners, in cases of deterioration, value the land just as they see it; liability of the landlord, after a fair rent has been fixed, for the drainage charge, if any, that had previously been apportioned on the tenants, *Garvey* 11908–11913. 12013–12019. 12145–12143—— Opinion that in case of deterioration of land the landlord suffers when a fair rent is fixed, the Commissioners valuing the land as they find it, *Barnes* 12887–12891.

Agreement with the view that where the tenant deteriorates the cultivating properties of the soil it is a hardship upon the landlord if the valuers fix the rent according to the condition of the land; no doubt that the appearance of the land does have an effect on the mind of the valuer, *Garvey*, 12335–12346. 12374–12378.

Donoughmore Committee. Argument upon the question whether the sitting of the Donoughmore Committee alarmed the Ulster tenants, and was the cause of so many agreements being signed out of court; such was the general rumour, *Greer* 8359–8388. 8382–8388. 8758–8761.

Doyle, Lawrence. (Analysis of his Evidence.)—Experience of witness for several years as to the working of the Land Acts, first as a lay Sub-Commissioner, and afterwards as a legal Sub-Commissioner, 2848–2850——Similar practice of witness' Sub-Commission as of that presided over by Mr. Bailey, 2851.

Several different heads of exclusion from the Acts within witness' experience, as on questions of pasture holdings, sub-letting, town parks, &c.; very rare exclusions under some other heads, 2852–2866——Belief that in no case before witness has the question been raised of sub-letting for the use of labourers on the holding, 2859-2863——Absence of any case of new tenancy created by an assignment or settlement, 2864–2866.

Usual practice of valuing each holding as it stands, according to the knowledge and experience of the individual valuers, the buildings being valued separately, 2867-2871. 2898-2901. 2924——Course pursued in valuing tenants' improvements, these being frequently reduced in Court, 2872. 2889–2892——Practice of valuers as to allowing for tenant right or occupancy, the amount varying greatly according to the improvements, &c., 2873-2875. 2904–2916——Distinction drawn between competition rent and fair rent, the former being in excess of the latter, 2873–2875. 2877-2888. 2910.

Great difficulty in estimating for the deterioration of the soil, this matter being determined by the lay Sub-Commissioners, 2876. 2930–2934——Belief that witness has had no case of limited owners as creating new tenancies, 2893, 2894——Legal objections sometimes raised on the part of landlords to the fixing of fair rents, whilst in many cases the landlord is very anxious to have the judicial rent settled, 2895–2897——Liability of the tenant to some loss through the landlord's right of pre-emption, 2917.

Belief as regards town parks that the Land Act has not been strained as against the tenant, 2918-2921——Conclusion as to many tenants not having come into Court through having had large abatements made, 2922, 2923——Concurrence with Mr. Bailey that in non-contentious cases, when the time arrives for re-fixing the rents, this might be done by one or two valuers without a hearing in Court; necessity of a re-valuation in every case, 2925–2934.

[Second Examination.]—Probability that if all the improvements made in Ireland were taken into account it would be found that they had not increased the letting value of the holdings even three or four per cent. on the outlay; very large number of improvements claimed for that are not worth their cost, 6874–6882. 6944–6950——Statement that there have been cases in which, in consequence of the law as to presumption, buildings undoubtedly made by the tenant have had rent put on them for the landlord, 6883, 6884.

Inability of the smaller landlords to prove their improvements in some cases, 6884–6888——Feeling of witness that the landlord's right of pre-emption at the specified value should be preserved; mistaken view of the law that when the landlord buys at the specified value the tenant loses the improvements he has made since the specified value was fixed, 6889-6903——Desirability of some rule being laid down for the guidance of the Sub-Commissioners in fixing the specified value, there being very often no data to go upon, 6904–6910.

Doyle, Lawrence. (Analysis of his Evidence)—*continued.*

No doubt that the abolition or contraction of town parks would interfere very much with the accommodation of the inhabitants of the town; belief that the present rents are too low in town parks, 6911–6913. 6981–6988 —— Very high prices recently paid for small farms; difficulty in selling large farms due to the absence of capital, 6913–6915 —— Statement that neither the high prices given for farms nor the Poor Law valuation are allowed to have any influence in fixing the rent; belief that substantial justice is done as regards the rents fixed, 6915–6920. 6991–6998.

Grounds for the opinion that the statutory term of fifteen years should not be shortened, 6921–6923 —— View of witness that it would be an advantage if the re-fixing of the rent at the end of the judicial term could be largely done without the intervention of the Commissioners, 6924–6929.

Statement that fewer legal questions arise for consideration now then formerly, most of the points having been settled, and that the Acts are now working more smoothly, 6930 *et seq.* —— Hardship upon the tenant that sub-letting which existed at the time the lease was made should be held to be sub-letting without the landlord's consent, 6934–6936.

Doubt as to the tenants having much difficulty in proving their improvements to the satisfaction of the Court; frequent impossibility, however, of proving drainage with exactitude, 6937–6950. 7002–7054 —— Explanation that the almost universal practice in valuing land in Ireland is to value it as if there were no buildings on it, and then to add the rent for the buildings, if any; general presumption that the buildings were made by the tenant, 6951–6980. 6999–7001. 7048, 7049 —— Desirability of an amendment of the law under which all improvements in connection with fee farm grants are rented, 6989, 6990.

[3rd Examination.] Explanation that witness' previously expressed opinion that rents fixed in town parks are unfair, having regard to the accommodation value, is due to his impression that the Sub-Commissioners fixed the rents on the assumption that the holdings were agricultural ones with proximity value, 7059–7062. 7305–7325 —— Disinclination of witness to say whether a tenant, who had a fair rent fixed, but who failed for want of witnesses to prove all the improvements that he was then entitled to, would be barred from going into the matter again in court, 7063–7065.

Belief that Mr. Bailey's Paper showing the exclusions from the fair rent provisions gives a generally accurate account of the law as developed by the tribunals, 7066–7082. 7272–7277 —— Adherence of witness to his view that, notwithstanding the fluctuations to which agriculture is subject in Ireland, it is not advisable to shorten the statutory term of fifteen years; suggestion that if the term were shortened some tenants would purposely neglect their farms in order to get a low rent fixed, 7083 *et seq.*

Great reluctance on the part of many tenants to go into court to get a fair rent fixed unless they feel certain they will derive considerable benefit from the litigation, 7132–7139. 7475–7494. 7534–7550. 7619–7627 —— Want of uniformity in the fair rents fixed by various Sub-Commissioners formerly; belief, however, that there is greater uniformity now, due to the Sub-Commissioners mixing together more, 7140–7147. 7501–7515. 7640–7648.

Explanation that the Sub-Commissioners fix the true or specified value of a holding at what they think a reasonable man, not urged by any great necessity, would give for the tenant-right if sold to him by the occupying tenant, 7150 *et seq.*; 7591–7604 —— Statement that the amount of the fair rent has a certain influence on the specified value, the latter often being a certain number of years' purchase of the former; variation of the number of years' purchase according to the circumstances of each holding, 7199–7201. 7495–7500.

Evidence to the effect that the price given for tenant-right is not taken into considera tion in fixing the specified value, 7202–7204 —— Admission that the general effect of fixing the specified value below the competitive value is that if the landlord exercises his right of pre-emption and then re-lets, there is nothing to prevent him taking from the "present tenant" the difference between the specified and competitive values, 7209–7238. 7596–7604.

Prejudicial effect on the incoming tenants, under the unrestricted Ulster custom, of the high prices they pay for the holdings; frequency of changes of tenancy in Ulster, 7229–7237 —— Practice of the lay Sub-Commissioners to take their view of the law from the legal Sub-Commissioner, 7239–7241.

Statement that the Sub-Commissioners ascertain the development of the law as laid down by the Land Commission and the Court of Appeal by reading the Reports, which, however, do not contain all the cases; desirability of an authorised report of every judgment, 7242–7253 —— Usual practice of witness, when the lay Sub-Commissioners differ in regard to the fair rent, to split the difference if they will both accept that course; necessity, if they both stand firm, of accepting the rent of one or the other, the higher rent having been generally accepted, 7254–7271. 7463–7474.

Reiteration of witness' opinion that in cases where sub-letting existed before the lease was made it is a hardship on the tenant to exclude him for sub-letting, 7278–7285 ——

Report, 1894—*continued.*

Doyle, Lawrence. (Analysis of his Evidence)—*continued.*

Doubt as to the tenant being in much danger of exclusion from the Act on account of trivial exceptions taken by the landlord; witness is not aware of any case having been dismissed because of a quarry or a brickfield on the holding, 7286-7297. 7605-7617. 7634-7639.

Grounds for the opinion that "once demesne land, demesne land for ever," is not the rule; agreement, however, that it may be demesne land for ever, although the landlord never has the right of taking it back again, 7298-7304——Desirability of fair rents being fixed on pasture holdings as well as upon tillage holdings, seeing that Ireland is now running largely into pasture, 7326-7330. 7628-7633.

Liability of a tenant to be shut out from court by reason of letting for temporary convenience, 7331, 7332——Opinion that it is open to the Sub-Commissioners under the Act to put rent on houses that are too good for the holding, although made by the tenants, 7333-7338.

Non-recognition of the amount of manuring that a tenant may have done in fixing the rent; admission that this course is not encouraging to a tenant who applies costly manures and fundamentally alters the character of the soil, 7339-7362——Doubt as to the ordinary process of liming lasting for a generation, 7363-7365.

Practice of the Sub-Commissioners to let the balance of the increased letting value due to improvements go to the landlord after making fair allowance to the tenant; rarity of cases, however, in which there is any balance for the landlord, 7366-7414. 7516-7527. 7587-7590——Statement as to witness not being aware of any tenant having to prove the custom in Ulster, except to avoid having a specified value fixed, 7415, 7416.

Necessity of the Ulster tenants proving their improvements; explanation that the presumption of improvement in favour of the tenant in Ulster only refers to visible improvements, 7417 *et seq.*; 7460-7462——Evidence to the effect that outside Ulster there is no presumption of improvement for the tenant before 1850, a certain presumption between 1850 and 1870, and an unqualified presumption since 1870, the burden of proof necessary to displace the presumption resting on the landlord, 7417-7459. 7528-7533. 7569-7586.

Instances of several cases of "Leinster leases," in which the whole of the tenants' improvements were disallowed in fixing the fair rent, because the tenants had contracted themselves out of the Act, 7551-7568——Recommendation, as already suggested, that in non-contentious cases the rent might be re-fixed by a valuation on the land, leaving the landlord or tenant to raise any question afterwards in court, 7618 *et seq.*

Draft Reports. Draft Report proposed by the Chairman of the Committee, *Rep.* xxxvi-xlix——Draft Report proposed by Mr. Brodrick, *ib.* xlix-li——Adoption of the former, subject to several amendments, *ib.* li-lviii.

DRAINAGE:

Course adopted in valuing for thorough drainage and scattered drainage respectively; difficulty at times in tenants proving their outlay on drainage, *Bayly* 3612-3617. 3640-3644. 3655-3659. 3664-3689——Different rule adopted as regards drains and as regards buildings in making allowance for tenant's improvements, though not claimed on the originating notice, the labour expended on the drainage being excluded, *ib.* 3788-3806. 3880-3888.

Considerable amount of drainage on which the return or the allowance would not exceed two per cent., *Cunningham* 4506——Particulars respecting cases in which landlord and tenant had borrowed money for drainage purposes from the Board of Works, such loans being payable by instalments charged on the tenant's rent; this additional rent-charge continued long after the loan had been discharged, *Greer* 8704-8710.

Experience of witness that it is exceptional for a landlord to contribute towards drainage; in some instances no allowance can be made the tenant for drains because he has allowed them to become choked, *Heard* 9437-9450. 9587-9590. 10059-10066——Occurrence of cases in which the additional rent due to drainage works executed with money borrowed from the Board of Works was largely in excess of the benefit conferred by the improvement; statement that when the tenant has paid the instalments by way of additional rent to the landlord he acquired the improvement, *Bewley* 10437-10450. 10654-10657.

Superficial character of the drainage executed by the tenants; amount claimed for drainage by the tenant very often in excess of the value of the benefit derived from the improvement, *Barnes* 12862, 12863——Particulars of cases in which drainage improvements have been executed with money borrowed from Board of Works, the landlords having to pay the amounts assessed on the tenants as well as those assessed on themselves, since fair rents were fixed, *ib.* 12954-12964.

Recommendation

Report, 1894—*continued.*

DRAINAGE—continued.

Recommendation by the Committee that the valuation should set out the allowances for drainage and reclamation, repectively, *Rep.* viii, ix.

See also *IMPROVEMENTS.*

E.

Ejectment. Power of a landlord to re-instate as a present tenant an evicted tenant whose tenancy has expired, *Shaw* 8908-8916.

Absence of any practical grievance, although there may be a theoretical one, in the tenant having to instruct his legal adviser to come into court and put a stay upon any proceedings of the landlord to eject him, in cases that are transferred from the county courts to the Land Commission, *Bewley* 11272–11282——Explanation as to the unfair state of the law, referred to by Lord Justice Christian as a *reductio ad latrocinium*, under which a person who assigns a leasehold or makes a sub-letting can himself bring an action for recovery and ejectment, *ib.* 11405–11411.

Estimate that not more than ten out of the 1,200 tenants on the properties that witness is connected with have absolutely depreciated since 1879, *Garvey* 12067–12079 ——Statement that witness very seldom resorts to dispossession of a tenant, and that legal process for arrears is not resorted to without good reason, *ib.* 12581–12588.

See also *Bloomfield Estate.* *Quinn* v. *Downshire.*

Encumbered Estates Court. Evidence showing that in purchases under the Encumbered Estates Court the rents have often been very much increased immediately after those purchases; example in the case of Adams *v.* Dunseath, *Greer* 8055–8060.

England (*Reduction of Rent*). Conclusion that much heavier reductions have been voluntarily made in England, since 1881, than in Ireland under the Land Acts, though the tenant in England generally makes no improvements, and posseses no legal property in the holding *Rep.* vi.

English-Managed Estates (*Ireland*). Explanation that witness has never excluded from the Land Act any holding as being an English-managed estate, *Bewley* 11195.

Evictions. See *Ejectment.*

Evidence (*Report of Committee*). Decision of the Committee (by the casting vote of the Chairman), 24th July 1894, in favour of proceeding with the consideration of their Report after taking such evidence as may be tendered in further sittings not exceeding three in number, *Rep.* xxxiii, xxxiv.

Reception of some evidence on behalf of the landlords at the last three sittings of the Committee, subject to which exception none but purely official witnesses had been examined, *Rep.* iii.

Reasons for not taking evidence on behalf of the tenants, nor, to any extent, on behalf of the landlords; examination, mainly, of the judges and officials who administer the Land Acts, *Rep.* iii.

EXCLUSIONS FROM FAIR RENT PROVISIONS:

Evidence explanatory of the various exclusions from the Land Acts, a very large number of occupiers being thereby deprived of the benefits of the fair rent system, *Fitzgerald* 400–423; *Bailey* 868 *et seq.*——Explanation respecting the exclusion of the purchaser of a tenancy where the conditions prescribed by the First section of the Act of 1881 have not been complied with, *Bailey* 881–888 ——Details respecting the exclusion of future tenancies, town parks, demesne lands, pasture holdings, &c., *ib.* 889 *et seq.*——Explanations respecting various other exclusions from the fair rent provisions of the Act of 1881, as in cases of sub-letting, "triviality," exclusions by agreement, &c., *ib.* 1042–1103.

Rough estimate of about 250,000 holdings upon which fair rents have not been fixed. a great many of these being specifically excepted from the Land Acts, or being excluded therefrom by subsequent judicial interpretation in the working of the Acts; other causes of non-application in these cases, *Bailey* 1373–1389. 1653–1660. 2618–2629 ——Considerable difficulty on the score of exemptions in respect of divided leaseholds and future tenancies, as well as in respect of town parks, *ib.* 1623–1634——Further reference to the limitation of the fair rent system to certain classes of tenants; exclusion of those who have contracted not to take the benefit of future legislation, *ib.* 1832–1836.

Consideration of decisions as to the extent of exclusions from the Acts through small portions of the holdings being non-agricultural, *Bailey* 2328–2340——Explanation that

Report, 1894—*continued.*

EXCLUSION FROM FAIR RENT PROVISIONS—continued.

it is not suggested by witness that leases are given as a means of bringing existing tenancies outside the Act, *Bailey* 2493-2498——Statement as regards previous evidence of witness (2. 1382, 1383) respecting the large number of restrictions and exclusions, and the effect of judicial interpretations in enlarging the number, that he adheres to such evidence without qualification, *ib.* 2645-2661.

Several different heads of exclusion from the Acts within witness' experience, as on questions of pasture holdings, sub-letting, town parks, &c.; very rare exclusions under some other heads, *Doyle* 2852-2866——Reference to the "Strawberry beds" case in which it was decided that certain ground was not agricultural; also to the case of Perry *v.* Taylor, where the tenant was excluded from the Act on the decision that his ground was an urban holding, *FitzGibbon* 3071-3077.

Hardship caused to the tenants of agricultural holdings by their being excluded under the Act from having a fair rent fixed on account of their being demesne or pasture tenants, or of there being mills other than flax mills on their holdings; general effect of exclusions to create unrest in the minds of agriculturists, *MacAfee* 5681-5692. 5837-5846——Testimony to the accuracy of Mr. Bailey's Paper showing the exclusions from fair rent provisions, *Doyle* 7066-7082. 7272-7277; *Greer* 8575-8577——Consideration of the causes which have led to so few applications for fixed rents; desirability of enabling every tenant to apply for a fair rent except in the case of demesne land, *Greer* 8623-8634.

Recommendation that in cases where a small portion of a holding is not within the purview of the Act, and the tenant wishes to get the status of an ordinary agricultural tenant, the land outside the Act should be given up, and a fair rent fixed on the remainder, *Bewley* 10267-10269. 10756——Belief that the Paper handed in by Mr. Bailey, showing the exclusions and restrictions, gives a perfectly accurate view of the law, but that it is not exhaustive; exclusion of agistment and conacre lettings from the Act, *ib.* 10726-10733. 10951 *et seq.*

Necessity of construing the Act of 1881 in conjunction with the Acts of 1860 and 1870; explanation that no judicial decision has created any new ground of exclusion, *Bewley* 10746-10748——Explanation that witness has never dismissed a case because of unreasonable conduct on the part of the tenant, the only case brought before him under the Equity Section of the Act of 1881 being one in which he reversed the decision of the Sub-Commission which excluded the tenant, *ib.* 10905-10911.

Practice of the Land Commission when fixing a fair rent to reject evidence as to rents that are paid on other portions of the same estate or on adjoining estates; contention that such evidence does not come within "the circumstances of the case, holding, or district," under Section 8 of the Act of 1881, *Bewley* 11139 *et seq.*

Return (submitted by Mr. W. F. Bailey) containing explanations respecting the exclusions, under different heads, from the Fair Rent provisions of the Land Act, *App.* 680-683.

Return, handed in by Mr. Justice Bewley, according to Provinces and Counties, together with summary, of the number of applications to fix fair rents, which have been excluded from the provisions of the Land Acts of 1881 and 1887, and from the Redemption of Rent Act of 1891, with the reasons for exclusion, *App.* 704-721.

Re-enactment of the Act of 1881 of certain exclusions under the Act of 1870, *Rep.* iii——Summary by the Committee of the various grounds of exclusion from the Land Act; review of evidence under each head of exclusion, *ib.* xvii-xix——Several recommendations for amendment of the present enactments, in the direction of removing different grounds of exclusion, *ib.* xix, xx.

See also *Arrears.* *DEMESNE LAND.* *FUTURE TENANCIES.* *Home Farms.* *Limited Owners.* *Middlemen.* *Mill Holdings.* *New Tenancies.* *PASTURE HOLDINGS.* *REDEMPTION OF RENT ACT.* *SPECIFIED AND TRUE VALUE.* *SUB-LETTING.* *TOWN PARKS.*

F.

FAIR RENTS:

1. *Generally as to the Circumstances taken into consideration by the Sub-Commissioners in fixing Fair Rents, and as to the working of the System.*
2. *Explanations respecting the Number of Applications relatively to the Number of Holdings, the Applications withdrawn, &c., and the Number of Fair Rents fixed.*
3. *Amount of Fair Rents as compared with the Rents before the Act of* 1881; *Statistics of Reductions.*
4. *Question of the Impregnability of Fair Rent Orders.*
5. *Conclusions and Recommendations of the Committee.*

1. *Generally*

Report, 1894—*continued.*

FAIR RENTS—continued.

1. *Generally as to the Circumstances taken into consideration by the Sub-Commissioners in fixing Fair Rents, and as to the working of the System:*

Instances of the two lay Assistant Commissioners hearing evidence of fixing rents without the intervention of the legal Commissioner, *Fitzgerald* 519–522——Rapid and loose way in which the value was arrived at, and the fair rent fixed from 1881 to 1886 as compared with subsequent years; production, however, of maps by the tenants in many places showing the boundaries, *ib.* 606–615.

Summary of the procedure in the Sub-Commission Courts, evidence being taken on disputed questions of area, upon changes in the rents, drainage or other charges on the holding, rates and taxes, and such other matters as affect the annual value, *Bailey* 659–676——Completion of the case, after the hearing in Court, by the two lay Sub-Commissioners visiting the holding, inspecting the improvements, buildings, &c., and making separate or independent valuations, field by field, the boundaries being marked on the Ordnance Sheet, *ib.* 681–702——Subsequent consultation between the legal Sub-Commissioner and his colleagues, when the whole case is carefully gone into before an order is made fixing the rent, *ib.* 703–709.

Result of witness' experience that he considers the present system of fixing judicial rents in Ireland to be as fair as anything that can be devised, *Bailey* 736–738——Special importance attached to the personal visitation and valuation of each holding by the two lay Sub-Commissioners, *ib.* 736–739——Great variety of circumstances taken into consideration in fixing a fair rent; due regard had to the probable surplus available for subsistence after payment of the cost of production, *ib.* 1471–1485. 1567–1571.

Various considerations as regards prices, production, total value of produce, &c., by which witness is influenced in fixing the fair rent; great variation between the fair rent and the produce, *Bayly* 4306–4318——Concurrence with Mr. Commissioner FitzGerald as to the loose process of fixing rents between the years 1881 and 1886, no maps having been forthcoming; belief, however, that the soil was tested as carefully as in recent years, *ib.* 4420–4435.

Opinion that when fixing a fair rent or a specified value all the evidence that either the landlord or the tenant can fairly produce should be taken into consideration, *MacAfee* 5631–5633——Statement that the occupancy right is considered when fixing a fair rent, and that a competition rent is fixed in cases where the holding is in the possession of the landlord, *ib.* 5788–5797. 5865–5884.

Disagreement of witness with the statement that the system of fixing rents between 1881 and 1887 was loose and rapid; no doubt, however, that the rents then fixed are now too high, owing to the fall in prices and the increased cost of labour, *O'Keeffe* 6026–6033. 6049–6055——Original idea of the Sub-Commissions that a fair specified value was twenty years' purchase of the difference between the fair rent and the competition rent; opinion that it is somewhat less now, being what a prudent tenant might fairly be expected to give for the holding, *ib.* 6063 *et seq.*; 6317–6323. 6353–6363. 6495 *et seq.* ——View of witness that the economic rent is a fair rent; impossibility of calculating what relation the economic rent bears to the competitive or market rent, *ib.* 6495–6528.

Statement that neither the high prices given for farms, nor the Poor Law valuation, are allowed to have any influence in fixing the rent; belief that substantial justice is done as regards the rents fixed, *Doyle* 6915–6920. 6991–6998——Want of uniformity in the fair rents fixed by various Sub-Commissioners generally; belief, however, that there is greater uniformity now, due to the Sub-Commissioners mixing together more, *ib.* 7140–7147. 7501–7515. 7640–7648.

Usual practice of witness (as legal Sub-Commissioner), when the lay Sub-Commissioners differ in regard to the fair rent, to split the difference, if they will both accept that course; necessity, if they both stand firm, of accepting the rent of one or the other, the higher rent having been generally accepted, *Doyle* 7254–7271. 7463–7474.

Definition of a competition rent as one which a solvent tenant would pay for the farm if it were in the market, *Roberts* 7695–7698——Opinion that where the rents have not been fixed the parties should go into court and get them fixed, but that there is no necessity to go into court to get judicial rents revised or adjusted, *ib.* 7699——Method followed by witness in fixing a fair rent; opinion that it should be fixed at a lower amount than would be given by a solvent tenant, *ib.* 7925–7939.

Explanation as regards the considerations by which witness is guided in fixing of fair rents that the fair rent is fixed on the basis of what would be paid by a solvent person taking possession, *Greer* 8605–8612——Belief that the divisions of different Sub-Commissioners as to fixed rents are not so much at variance as formerly; competency of the Sub-Commissioners to declare the true value of land and improvements, *ib.* 8804–8814.

Impossibility of taking into consideration a competition rent in fixing a fair rent; practice of witness to allow the landlord about two-fifths of the gross produce on a dairy farm and one-third on a tillage farm, *Heard* 9462–9469. 9531–9540. 9673–9677. 9690–9703. 9989–9995. 10071–10076——Adequacy of the present system of fixing fair rents; opinion as to the rarity of divergencies in the Sub-Commissioners' views, *ib.* 9500–9507.

FAIR RENTS—continued.

1. *Generally as to the Circumstances taken into consideration, &c.*—continued.

Contention that the Sub-Commissioners have, in fixing fair rents, made allowance for the occupation right of the tenants; certainty, however, that a number of the rents that have come up on appeal from Mr. Doyle have been reduced, *Bewley* 10236–10246. 10296–10299——Doubt as to the possibility of estimating the percentage of difference between a competitive and a fair rent, *ib.* 10434–10436.

Details as to the various particulars that the Sub-Commissioners have to give on the "Pink Report"; non-inclusion of the allowance made for occupation right, as the Sub-Commissioners are not instructed as to what extent they are to take prices into consideration, *Bewley* 10694 *et seq.*; 10806–10811——Desirability of a definition of fair rent being laid down by the Legislature, *ib.* 11030–11036.

Experience of witness that about one-third of the value of the gross produce of a farm would be a fair rent to pay to the landlord, *Garvey* 12245–12270——Impression that the Commissioners, when fixing a fair rent, do not make any distinction as regards old rents that have been unaltered for years, but go through the same course as for more recent rents, *ib.* 12413 *et seq.*

2. *Explanations respecting the Number of Applications relatively to the Number of Holdings, the Applications withdrawn, &c., and the Number of Fair Rents fixed:*

Total of 354,890 fair rent cases from August 1881 to 31st March 1894, the entire number of rents fixed being 294,654, inclusive of 121,902 agreements filed, *Fitzgerald* 213–218——Total of 60,234 cases struck out, withdrawn, or dismissed; explanation thereupon, *ib.* 218–232. 247–251——Definition of the classes of persons entitled to have a fair rent fixed, and of the several classes of holdings in respect of which a fair rent can be fixed; several exclusions under the Act of 1881; *ib.* 285–296.

Considerable number of fair rent cases still coming in, *Bailey* 1285——Several reasons which account for the large number of holdings which have not come under the Acts, temporary abatements and the existence of arrears being the main causes, *Bailey* 1395, 1396; *Doyle* 2922, 2923; *Bayly* 4181, 4182——Explanation as regards certain figures quoted to witness respecting the total number of agricultural holdings in decennial periods, the probable number of small holdings, and of other holdings excluded from the Acts under different heads, and the total number in which fair rents have not yet been fixed, that he is not in a position to conform them, and is not prepared with statistics on the subject outside those in the Reports of the Land Commissioners, *Bailey* 1373–1389. 1653–1660. 2618–2629. 2839–2847.

Probability that the majority of the 168,000 tenants who have not come to the court to have fair rents fixed under the Act have got some temporary arrangement or reduction; no doubt that in some cases they were deterred from coming by the cost of the procedure and fear of the results, *Cunningham* 4740–4744. 4970–4974.

Various reasons why tenants do not come into court to have fair rents fixed, such as a temporary abatement from the landlord, large improvements made by the tenant, arrears, &c., *O'Keeffe* 5992–5998——Belief that the receipt by the tenant of temporary abatements, not taking the form of agreement filed, does account for a large proportion of tenants not coming into court; also that improvements often keep the tenants out of court, *ib.* 6142 *et seq.*; 6258–6265. 6315, 6316. 6534–6537——Reasons why many of the tenants would not risk incurring the displeasure of their landlords by coming into court if an amicable arrangement could be come to outside, *ib.* 6726–6756. 6869–6872.

Considerable reluctance on the part of many tenants to go into court to get a fair rent fixed unless they feel certain that they will derive considerable benefit from the litigation, *Doyle* 7132–7139. 7475–7494. 7534–7550. 7619–7627.

Great difficulty in ascertaining how many tenants there are in Ireland who would come within the Act; doubt as to there being 486,000 agricultural holdings, *Bewley* 10738–10740——Experience of witness that the general reason why present tenants do not come into court is because they are getting an abatement or are in arrear; disbelief in the theory that each case of exclusion has warned many others away, *ib.* 10741 *et seq.*

Return issued by the Land Commission of the cases struck out, withdrawn, and dismissed, the total being 56,823; detailed explanation as to the various classes of cases included in the 7,641 shown as dismissed, *Bewley* 10144–10159.

Total of 354,890 fair rent applications disposed of from the passing of the Act of 1881 to 31st March 1894; *Rep.* iv——Total of 294,654 fair rents fixed since the Act of 1881, including 157,178 fixed by the Land Commission, 15,537 by the county courts, and 121,902 by agreements between landlords and tenants, *ib.*

Report, 1894—*continued.*

FAIR RENTS—continued.

3. *Amount of Fair Rents as compared with the Rents before the Act of* 1881: *Statistics of Reductions:*

Aggregate reduction of rents from 6,140,602*l.* to 4,861,805*l.* since August 1881; particulars hereon for different years, *Fitzgerald* 233–246. 494, 495——Opinion that many of the rents fixed by witness in 1881 and 1882 are now too high, *ib.* 383–385.

Very similar percentage of reduction in the years 1892–93 and 1893–94 in the rents under old leases; also, in other rents, *Bailey* 2630–2633——Considerable difference between the former competition rents and the fair rents fixed under the Land Acts; average of about 20 per cent. reduction in the latter case, *ib.* 4295–4303——Lower rents fixed by the Assistant Commissioners within the last seven or eight years; insufficient allowance to tenants previously to 1885; *ib.* 4304, 4305. 4408——Opinion that the rents fixed by witness between 1881 and 1887 would not now be fair rents, *ib.* 4436, 4437.

Conclusion that if the rents fixed in the early years of the Land Commission came into Court now they would be reduced owing to the fall in prices and the increased cost of labour and of production, *Roberts* 7659–7662. 7687–7694. 7703–7709. 7752—— Net increase of 1,000*l.* in rent out of about 45,000 appeals; objection to the inclusion in the average of the numerous cases in which rents have been simply confirmed, *ib.* 7858–7865.

Belief that rents are now fixed at a much lower rate than they were in the early years of the Land Act, *Shaw* 9027–9030 — Concurrence in the view that the rents fixed between 1881 and 1885 are higher than they would have been if fixed at the present time, *Bewley* 10392–10394.

Information as to the cases that have been in Court on the estates that witness is interested in, very few of them having been dismissed; the tenants who remained out of Court are, as a rule, lower rented than those who went in, *Garvey* 12415–12427. 12555–12574——Variation of reductions from 10 to 25 per cent., *ib.* 12562–12566—— Probability that the fair rents as calculated by witness are about 15 per cent. higher than the rents fixed by the Sub-Commissioners, *ib.* 12722 *et seq.*

Return according to provinces and counties showing the percentages of reduction on the former rents, or rents fixed judicially, and on rents fixed by agreement, from the commencement of proceedings to 31st March 1894; *App.* 738–741.

Summary of reductions in fair-rent cases since the Act of 1881; average of 19·9 per cent. on reports of valuers, of 21·2 by Chief Commission and Sub-Commission for yearly tenancies, of 24·7 for leasehold tenancies, and of 25 in cases under the Redemption of Rent Act, 1891; *Rep.* iv.

Total of 6,140,602*l.* as the gross rental dealt with under all the fair-rent provisions of the several Acts since the Act of 1881, this total having been reduced by 1,279,475*l.*, or 20·8 per cent., *Rep.* vi.

4. *Question of the Impregnability of Fair Rent Orders:*

Evidence showing that a fair rent Order has no final validity in the Common Law Courts, and may be set aside under different circumstances; several cases cited in illustration, *Bailey* 1739–1751——Statement with further reference to the liability of the tenant's title to be questioned at any time; liability also of the Commissioners' decisions to be reversed, *ib.* 2146–2157——Further evidence in elucidation of statement that it is open to a Common Law Court to question the validity of a fair-rent Order, and to set it aside if made *ultra vires* or without jurisdiction; *ib.* 2182–2197. 2545–2547.

Repetition of statement that it is a delusion to say that a fair-rent Order is impregnable, though witness considers the protection of the Land Act is a real protection, *Bailey* 2662–2664—— Concurrence in the proposition that every fair rent Order is impregnable if made within the jurisdiction of the Land Commission, *ib.* 2788–2792.

Evidence on the subject of the powers of the Land Commission, as being an "inferior Court," with a limited jurisdiction; inability of the Court to deal with cases other than those of landlord and tenant, *FitzGibbon* 3438–3444 — Reference to the cases of Hemphill *v.* Frazer and Kelly *v.* Raltey, where fair rents were fixed by the Land Commissioners, but were disallowed by the Court of Common Pleas on the ground that the former body had no jurisdiction owing to there being no tenant, *ib.* 3446–3451—— Detailed argument as to the tenant's title, after a fair rent is fixed between him and his landlord, not being affected in any way; illustrations on the cases of Hemphill *v.* Frazer and Peyton *v.* Gilmartin, and in the judgment of Mr. Justice Lawson and Mr. Justice Holmes, *ib.* 3453–3459.

Expediency of the principle of the impregnability of a fair rent; necessity of freeing the administration of the law from all technicality and legal exclusions so as to enable all parties to see exactly where they stand, *Cunningham* 4759–4768. 4993, 4994.

Report, 1894—*continued.*

FAIR RENTS—continued.

4. *Question of the Impregnability of Fair Rent Orders*—continued.

Impossibility of annulling a fair rent fixed by the Land Commission, provided that the relation of landlord and tenant exists between the parties; opinion that the jurisdiction of the Court is rarely questioned, *Shaw* 8894–8897——Security of the statutory tenant provided he has not got his rent fixed against some one who is not the owner of the land, *ib.* 8900-8902.

5. *Conclusions and Recommendations of the Committee:*

Data for the conclusion of the Committee that the rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive, *Rep.* v.

Review of certain cases in which an average reduction of 18 per cent. made by agreements was followed by a further reduction of 20 per cent. by the Court, *Rep.* v, vi.

Absence of any satisfactory definition of the fair rent, whilst there is no fixed principle or settled mode of valuation, *Rep.* vi, vii.

Recommendation that in future all valuations be so made and recorded as to show the fair rent to a solvent person desiring to become a tenant, the holding, including buildings, being valued as it stands as a going concern, *Rep.* viii.

See also *ABATEMENTS OF RENT. Agistment Lettings. AGREEMENTS AND VOLUNTARY ARRANGEMENTS. APPEALS AND RE-HEARINGS. Arbitration. Arrears. BUILDINGS. Costs. COUNTY COURTS. Delay. DEMESNE LAND. DETERIORATION OF HOLDINGS. DRAINAGE. EXCLUSIONS, &c. FREE SALE. FUTURE TENANCIES. Home Farms. IMPROVEMENTS. Inspection of Holdings. JUDGMENTS AND LEGAL DECISIONS. Labour. LANDLORDS. Limited Owners. Markets, &c. Mill Holdings. Mortgages. PASTURE HOLDINGS. PRICES. Produce. Rates and Taxes. RECLAMATION OF WASTE LAND. Roads. SPECIFIED VALUE AND TRUE VALUE. STATUTORY TERM. SUB-COMMISSIONS. Sub-division of Holdings. SUB-LETTING. TENANT RIGHT AND OCCUPATION INTEREST. TOWN PARKS. TURBARY. ULSTER. VALUERS AND VALUATION.*

Farm Buildings. See BUILDINGS. IMPROVEMENTS.

FEE FARM GRANTS:

Treatment of improvements in fee-farm grant cases, where the tenant elects to buy under the Rent Redemption Act, as adding to the security of the holding, the tenant or grantee buying his own improvements, *Fitzgerald* 257–273. 321, 322——Provisions in the Rent Redemption Act as regards the fixing of fair rents, the grantees having no claim in respect of improvements, *ib.* 274–284——Exclusion from the Land Act, by decision of the Court of Appeal, of fee-farm grants executed before 1860; *ib.* 316–320——Right of ejectment for non-payment of rent in the case of fee-farm grants, *ib.* 426, 427.

Explanation as to what is really purchased by the tenant in fee-farm grant cases, no credit being given for his improvements; reference hereon to the case of Mollan *v.* Keran as one of fixing a fair rent, *Fitzgerald* 640–646.

Decision by Mr. Justice Bewley in the case of Keran *v.* Mollan, excluding fee-farm grantees from claiming for improvements under any circumstances, this being under the Redemption of Rent Act, and over-ruling a previous decision by witness to a contrary effect, *Bailey* 802-829 —— Statement as to the holding being valued as it stands for rent in the case of a fee-farm grant, the tenant paying on his own improvements, *ib.* 1685–1687——Examination as to different classes of fee-farm grants, and as to the principles adopted in fixing the redemption value in those cases which come under the Land Acts, *ib.* 2064–2100.

Great injustice to the tenant as regards fee-farm grants by reason of his being rented on his own improvements, *Bayly* 4035–4038——Evidence to the effect that in the case of fee-farm grants under the Rent Redemption Act the entire improvements of the tenant go to the landlord, *MacAfee* 5896–5901——Desirability of an amendment of the law under which all improvements in connection with fee-farm grants are rented, *Doyle* 6989, 6990.

Anomaly of the Rent Redemption Act by which a man who had a fee-farm grant in 1861 is in a different position to a man who got his grant before that date, *Greer* 8064–8071——Opinion that fee-farm grants and perpetuity leases stand on much the same footing as regards the decisions of the Sub-Commissioners, *ib.* 8337–8342.

Conclusion of the Committee that there is no principle in the exclusion of fee-farm grantees from the Redemption Act of 1891, and that they should have the right of resorting to the Court, *Rep.* xx.

Report, 1894—*continued.*

Fences. Proof required as to the tenant having made the fences and roads, in which case no addition is made to the rent in respect of them, *Bailey* 1507–1512 ——Suggestion that, in fixing the date behind which no improvement as regards fences, &c., should be considered, it would be better to take 1840 or 1846 than 1850, *Cunningham* 5232–5249 ——Consideration given to external fences and roads in making a valuation, though no allowance is made for internal fences and gates, *Heard* 9784–9812. 9948–9959.

Fines (*Leases*). Statement on the subject of the non-return to the tenant, when a fair rent is fixed, of any fine or caution money paid by him as security at the beginning of his lease, *Bailey* 1824–1831.

Fishing Facilities. Consideration allowed (in the fixing of fair rents) for fishing facilities, *Bayly* 3583, 3584.

Fitzgerald, Mr. Commissioner Gerald, Q.C. (Analysis of his Evidence.)—Extensive experience of witness as to the working of the Land Acts, in different parts of Ireland, in his several capacities of Legal Assistant Commissioner from November 1881 to November 1882, County Court Judge from 1886 to 1890, and Commissioner since the latter year, 1–10. 606, 607——Functions discharged by witness with reference specially to the Fair Rent Department, the distribution of the business of the Sub-Commissioners and of the Court Valuers being under his charge, 8–10.

Initiation either in the Civil Bill Court (*alias* County Court), or in the Land Commission, of the proceedings to have a fair rent fixed; conditional right of transfer to the latter when commenced in the former, 11–13——Considerable delay formerly in connection with the transfer of the proceedings, 13——Large number of applications for transfer, these being generally granted, 14–16.

Summary of the procedure in the Land Commission for the fixing of fair rents, from the time of service of the originating notice till the hearing, 17–23——Delegation of the fair rent cases to a Sub-Commission, this at present comprising a legal chairman and three pairs of lay or agricultural commissioners, with a deputy registrar; past changes in the constitution of each Sub-Commission, 24–28——Varying area under a Sub-Commission, the districts being altered from time to time by regulation of the Land Commission, 29–33.

Practice as to the legal chairman of each Sub-Commission sitting alternately with each pair of the Lay Assistant Commissioners; limited extent to which the latter sit without the former, 34, 35——Hearing of cases according to their priority on the lists, about three weeks' notice being given to the parties, 36–44——Evidence taken on oath, the parties appearing by solicitors or counsel, 45, 46.

Regulation as to the tenant's claim for improvements, where the valuation is not under 10*l.* a year, being specified on the back of the originating notice, though he is not excluded from claiming if he serves the landlord with notice a reasonable time before the hearing, 47–49. 444 446——Practice, after the hearing, as to the inspection of the holding by the two lay Commissioners, and as to the detailed and elaborate character of their report to the Commissioners with reference to the various classes of land, the improvements found to exist, the actual improvements allowed, &c., 50–92.

Usual course to value the land separately from the buildings and to add an increased rent for the latter when they belong to the landlord, 61–69——Facility in obtaining a copy of the Assistant Commissioners' report; also a tracing of the map of the holding, 78, 79. 84–86——Statement as to the reports not showing what allowance has been made to the tenant in respect of the increased letting value through his improvements, 80–84. 173–177——Announcement of the decisions of the Sub-Commission in open court, 93.

Right of appeal to the Commissioners within two months; conditions attached thereto, 97–105——Practice as to re-valuation by two appeal valuers, who are, as a rule Sub-Commissioners, their report and field book being before the Commissioners; several other valuations also before the latter, 105–108. 115–144. 153–158. 161–172.

Arrangements as to the local sitting of the Commissioners on appeal cases, witness and Mr. Justice Bewley always sitting, with a third Commissioner unless unavoidably absent, 109–114—— Summary of the procedure before the Commissioners, and character of the oral and documentary evidence; decision announced in open court, 147–177—— System of appeal from the Land Commission to the Court of Appeal in Ireland, there being no further appeal to the House of Lords; power also to have a case stated for the court upon any question of law, 178–193.

Commencement of proceedings in the County Courts by an originating notice, there being a list of County Court valuers to whom the judges can refer the matter for report: payment of these valuers by the Treasury, 194–202——Varying practice of different County Court judges as to the procedure, 201—— Very faulty way in which the orders are made out for the County Court judges by the Clerks of the Peace; recent complaint by the Commissioners on the subject, 203–209——Evidence heard by the Commissioners on appeals from the County Courts when there is no cause book; instances of no orders

Report, 1894—*continued.*

Fitzgerald, Mr. Commissioner Gerald, Q.C. (Analysis of his Evidence)—*continued.*

of the courts being forthcoming, 210——Jurisdiction of the County Court judge in lease cases under the Act of 1887; 211, 212.

Total of 354,890 fair-rent cases from August 1881 to 31st March 1894, the entire number of rents fixed being 294,654, inclusive of 121,902 agreements filed, 213–218——Total of 60,234 cases struck out, withdrawn, or dismissed; explanation thereupon, 218–232. 247–251——Aggregate reduction of rents from 6,140,602*l.* to 4,861,805*l.* since August 1881; particulars hereon for different years, 233–246. 494, 495.

Object of the Redemption of Rent Act of 1891 to allow persons holding under long leases to purchase their holdings or to have fair rents fixed; explanation of the procedure of the Land Commission in cases under this Act, 252–256——Treatment of improvements in fee-farm grant cases, where the tenant elects to buy under the Rent Redemption Act, as adding to the security of the holding, the tenant or grantee buying his own improvements, 257–273. 321, 322——Provisions in the Rent Redemption Act as regards the fixing of fair rents, the grantees having no claim in respect of improvements, 274–284.

Definition of the classes of persons entitled to have a fair rent fixed, and of the several classes of holdings in respect of which a fair rent can be fixed; several exclusions under the Act of 1881; 285–296——List of leading cases and judgments which the Commissioners have most occasion to refer to upon disputed questions in connection with improvement, town parks, pasture, demesne lands, sub-letting, &c., 297–299.

Arrangements as to holdings being visited and reported upon by purchase inspectors or valuers (acting as Assistant Commissioners), in connection with purchases under the Redemption of Rent Act, 300–307. 323, 324——Explanation that under this Act there are no special provisions as to arbitration; much greater cost of purchase by arbitration than under the Act, 308–314——Exclusion from the Act, by decision of the Court of Appeal, of fee-farm grants executed before 1860; 316–320.

Information respecting the course of procedure, and the excessive delay, in a case in which a tenant named John Sullivan, of Bantry, served an originating notice in December 1888, for fixing a fair rent; reduction not finally settled till June 1893, no allowance having been made for rack-rent paid over a previous period of thirty-two years, 325–359——Immense number of outstanding applications to fix fair rents when witness became a Land Commissioner in 1890; 336, 337——Approval, on the whole, of the system whereby in fair rent cases no costs are given, save under exceptional circumstances, 360–375.

Explanation that in fixing rents in Ulster the Sub-Commissioners took the Ulster custom into consideration, 376–383——Opinion that many of the rents fixed by witness in 1881 and 1882 are now too high, 383–385——Information as to the dates of issue of different forms, and the alterations therein from time to time; non-objection to certain details as to improvements, &c., being required, 386–396.

Statement to the effect that appeals are not refused on mixed questions, 397–399——Examination as to the extent to which various classes of tenants have been excluded from the statutory provisions for fixing fair rents, 400–423——Right of ejectment for non-payment of rent in the case of fee-farm grants, 424–427.

Further explanation respecting the control exercised by witness since March 1893, and previously by Mr. Wrench (as senior Commissioner), as regards the arrangements for fixing fair rents, 428–440. 505–518——Information with respect to the rules and procedure in connection with claims for improvements and the means adopted by the Sub-Commissioners and Court Valuers in order to arrive at the amount to be allowed, 441–493.

Difficulty in stating the reasons why cases are withdrawn or dismissed, or the rental represented by such cases, 496–501——Large reduction in cases of long leases, many of which were made in prosperous years at high rents, 502——Consent of the landlord to sell in about one-fifth of the cases under the Redemption of Rent Act, 503, 504.

Instance of the two lay Commissioners hearing evidence and fixing rents without the intervention of the legal Commissioner, 519–522——Occurrence of appeals in some 20 or 25 per cent. of the cases, these now coming about equally from landlords and tenants, 523–525——Immense delay formerly before judgments were obtained, this having now disappeared, 526–528. 631–636——Arrangement as to the sittings of the Commissioners, Mr. Justice Bewley and witness always sitting in appeal cases, 529–533.

Separate valuation by the Sub-Commissioners of the improvements, a deduction being allowed in respect of those which are made by the tenant, though the amount of such allowance is not made known to the latter when the judicial rent is fixed; non-objection on witness' part to this information being supplied, 534–566. 578, 579——Probable extent to which solicitors are employed by the tenants in filling up the originating notice, 567–573——Similar principles observed by the appeal valuers and the Sub-Commissioners in arriving at the annual value, 574–577

Conclusion

Report, 1894—*continued.*

Fitzgerald, Mr. Commissioner Gerald, Q.C. (Analysis of his Evidence)—*continued.*

Conclusion as to the cumbrous and costly character of the machinery under the Land Acts, witness considering that the time has arrived for the substitution of a simpler and cheaper procedure, 580–595——Opinion that, in the majority of cases, public hearing in court is not necessary, 585——Heavy pressure of the costs in small cases when the valuation is under 10*l.*; reference especially to appeals in such cases, 586–593——Records kept in the office of the judgments of the Commissioners and of the Sub-Commissioners, 596–605.

Rapid and loose way in which the value was arrived at from 1881 to 1886, as compared with subsequent years; production, however, of maps by the tenants in many places showing the boundaries, 606–615——Degree of difficulty in the earlier years through Sub-Commissioners having been sent to Ulster who were not conversant with the local custom; this does not now apply, 616–622.

Circumstances under which the report of one appeal valuer may be adopted (without an appeal being heard) over-ruling the judgment of two Sub-Commissioners, 623–626——List of county court valuers fixed by the Commissioners in 1887, with the sanction of the Lord Lieutenant, valuers being selected from this list by the county court judges, 627–630——Due consideration given by the county court judge to the evidence and to the valuer's report in fixing the rent, 631.

Large interests represented by many of the long leases and fee-farm grant cases, in which notice has been given under the Redemption of Rent Act; number of such cases, 637–639——Explanation as to what is really purchased by the tenant in fee-farm grant cases, no credit being given for his improvements; reference hereon to the case of Mollan *v.* Keran as one of fixing a fair rent, 640–646.

FitzGibbon, The Right Honourable Gerald, P.C. (Analysis of his Evidence.)—Is one of the Lords Justices of the Irish Court of Appeal; is prepared to give evidence respecting the land cases which have come before his Court since 1882; 2935–2939.

Particulars of the constitution of the Court of Appeal; explanations that the presence of three judges is absolutely necessary at any final appeal, but that in a very important case (Adams *v.* Dunseath) there were seven present, 2940–2943——Information as to the procedure of the court in respect of questions of law and mixed questions of fact and law, the only two forms of Land Commission appeals; exclusion from the court of all cases of "fair rent" or "value," 2944, 2945.

Definition of the difference between an appeal and a rehearing, 2946——Details of the data upon which the Court of Appeal base their decisions, 2947, 2948——Attention drawn to the non-existence of any authentic version of Land Judgments; the Council of Law report only such cases as they consider useful, 2949–2953——Examination as to the number and classification of cases that have come before the court; judicial statistics of all cases from 1882 to 1893, inclusive, handed in, 2954–2968. 3034 3036.

Enumeration of the exceptional difficulties arising from the interdependence of the various Land Acts; special reference to the terms "holding" and "present tenancy," 2969–2976. 3037, 3038——Importance of the Act of 1860 in making the relation of landlord and tenant depend entirely on contract, 2977.

Detailed explanation of the effect of the Act of 1870 as regards Ulster usages and the rights of ordinary tenants respecting compensation, 2978–2992——Important effect of the incorporation of the Act of 1870 with the Act of 1881, by Section 57 of the latter, 2993–2995——Summary of the subject-matter of the Act of 1881; subject to certain restrictions a tenant may sell his holding, but is precluded from sub-letting without the consent of his landlord, 2996–2999. 3013.

Evidence respecting the effect of the Act of 1881 on tenancies from year to year; belief that such tenants are entitled to surrender their holdings, 3000–3002——Inability of any leaseholder to apply for a fair rent except under Section 21 of the Act of 1881; reference to the case of Roe *v.* Cooney, where the family of a leaseholder for life might at his death become tenants from year to year, 3003–3006. 3011, 3012.

Information respecting Section 15 of the Act of 1881, which deals with cases of sub-tenancies; decision in the cases of Seymour *v.* Quirke and West *v.* Huggard, where, after the death of the middle landlord, the year-to-year tenancy granted by him to the sub-tenant was to be continued under the head landlord, 3007–3010——Statement as to the anomalies and difficulties arising from the section of the Act of 1887 relating to leaseholders, 3014–3017.

Further reference to the difficulty caused by the Act of 1881 in regard to sub-letting and to its purported amendment by the Act of 1887; uselessness of suggesting any improvement so long as middlemen continue, 3018–3025——Unsatisfactory wording of Section 9 of the Act of 1887 relating to town-parks; reference hereon to the case of Dr. Donnelly, 3026–3033.

Details of the numerous cases of dispute which have arisen as to whether land is held for an agricultural or pastoral purpose, or as a residential holding; special reference to the

FitzGibbon, The Right Honourable Gerald, P.C. (Analysis of his Evidence)—*continued.*

the case of Hunt *v.* Ryan in which the decision of the lower court held good owing to an equal division of opinion in the Court of Appeal, 3041–3064, 3066–3068——Particulars of the case of Moonan *v.* Conyngham showing the difficulty of adjudging whether land is held residentially or not, 3064, 3065——Reference to the "Strawberry beds case" in which it was decided that certain ground was not agricultural; also, to the case of Perry *v.* Farley where the tenant was excluded from the Act on the decision that his ground was an urban holding, 3071–3077.

Evidence relating to two mill cases, Boyle *v.* Foster and Murdoch *v.* Parkes; decision that the holdings were not agricultural in character and therefore did not come within the provisions of the Act, 3077–3082——Question as to whether scutch mills come under the Act, 3083–3086.

Particulars of the case of Crookshank *v.* Law, in which the decision of the Recorder of Derry was reversed by the Land Commission, and the decision of that body reversed by the Court of Appeal, 3087–3092——Reference to the tolls case of Wall *v.* Eyre, where a fair rent could not be claimed owing to the tolls being a distinct subject-matter in the lease, 3095–3097.

Explanation of the recognised meaning of the legal term "demesne"; such meaning will not accord with the wording of the Act of 1881; 3098–3102——Decision of the Court of Appeal in the case of Griffin *v.* Taylor on the subject of demesne land, 3102–3106——Peculiarity of the case of Magner *v.* Hawkes, where certain land was originally let as agricultural and not demesne land; decision by four out of five judges that the land in question was demesne land, 3107–3114.

Reference to the case of Pratt *v.* Gormanstown, in which a piece of land was decided to be demesne although held from year to year, 3115–3121——Details respecting the case of Hewson *v.* Listowel; decision of the Court that a farm consisting of demesne and other land was agricultural in character, 3121——Evidence showing that in a recent case, Watson *v.* Abercorn, the decision of the Land Commission was reversed and agricultural land was adjudged to be demesne, 3121–3125.

[Second Examination.]—Explanation of the discrepancy between the number of cases of appeal on the list handed in by witness and those on the Registrar's list; the 202 cases on the list prepared by witness came from the Land Commission Court only, 3126–3135. 3146–3150——Statement that the acreage given by witness in his notes is sometimes English and sometimes Irish, 3136, 3137.

Further reference to the constitution of the Court of Appeal, there having been fourteen individual judges, 3138——Correction of a certain statement relative to the case of Adams *v.* Dunseath, 3139——Attention called to statements in previous evidence where the term "Court of Appeal" refers to the Land Commission Court, 3140, 3141.

Further explanation in regard to the data by which cases of appeal are decided; admissibility of the papers prepared by the Sub-Commissioners as evidence in land proceedings, 3142–3144——Information with further reference to the power of a statutory tenant to surrender his tenancy; statement as to a judgment on this subject in the case of Torrens *v.* Cooke, 3153–3155.

Correction of statement that the cultivation of strawberries was not "agricultural," 3157——Quotations from a report on the judgment in the mill case of Boyle *v.* Foster, in which it is shown that the general tenour of the lease in question is incompatible with the idea of an agricultural holding, 3158, 3159——Point raised as to the small value of the tolls in the case of Wall *v.* Eyre; belief that the value in no way influenced the decision of the Court of Appeal, 3162–3166——Reference to the case of Watson *v.* Abercorn; unanimity of the judges in the decision arrived at, 3166, 3167.

Detailed explanation of the three conditions necessary to constitute a statutory town-park, viz., residence of occupier, proximity to a town, and increased value as accommodation land, 3168–3176——Particulars of the case of Nelson *v.* Headford as to the date of residence; decision that if a tenant lived in a town at the time of the passing of the Act his subsequent removal therefrom would not bring him within the scope of the Act, 3178. 3233.

Further information respecting town-parks as exemplified in the case of Martin *v.* Annesley, 3179, 3180——Specimen case, viz., Rossmore *v.* Donelly, where an appeal was refused on account of the residence not coming within the "suburbs," 3181–3185——Further case, viz., Caruth *v.* McMahon, in which the tenant was ruled out of the Act owing to his residence being proved "suburban," 3185–3188.

Enumeration of "towns" from which Court of Appeal cases have been brought, 3189–3192——Evidence showing the great difficulty of defining a "town"; explanations respecting the opinion of the Court of Appeal on that subject, 3192–3206. 3213–3220. 3234, 3235——Reference to the case of Caledon *v.* Archer, which was proved to be outside the Act owing to the strong evidence of the increased value of land, and of Goodbody *v.* Perry, which was ruled within the Act on account of the holding in question bearing an increased value to one particular tenant only, 3206–3212.

Impossibility

Report, 1894—*continued.*

FitzGibbon, The Right Honourable Gerald, P.C. (Analysis of his Evidence)—*continued.*

Impossibility for the Court of Appeal to lay down general principles for the decision of land cases, owing to the variation of the facts of each individual case; instance in the case of Stewart *v.* Davidson, 3221-3223——Question as to whether the use to which land is put affects its accommodation value; statement that as a preliminary in a case of appeal respecting town-parks or demesne land the holding must first be proved to be agricultural, 3227, 3228.

Information respecting Section 9 of the Act of 1881 whereby fair rents may be fixed on holdings that would constitute town-parks provided they are let and used as ordinary agricultural farms; illustration in the cases of McNamara *v.* McNamara, Davidson *v.* Stewart, and Daly *v.* Wright, 3229-3232——Belief that a farmer might take up a home farm under the Act provided that he used it for his own occupation, 3237, 3238.

Detailed evidence regarding the Act of 1881 in relation to pasture holdings; difficulties which have arisen as to the meaning of the word "mainly" as used in the phrase "mainly for the purpose of pasture," 3239-3242——Particulars of the great case of Westropp *v.* Elligot, on the subject of pasture holdings, which came before the House of Lords; also of the cases of Draught *v.* Stubber, Holmes *v.* Lander, O'Brien *v.* White, and Byrne *v.* Hill, 3243-3253.

Reference to the recent case of M'Cormick *v.* Loftus; statement hereon that where the contract does not mention the purpose for which land may be used consideration is given to extrinsic evidence and to the size and nature of the holding, 3253——Details concerning some cases illustrative of the meaning of the Act of 1881 respecting lands let for the temporary necessity or convenience of landlord or tenant; reference hereon to Whistler *v.* Delacherois, Wilson *v.* M'Cutcheon, and Finnerby *v.* Cloncurry, 3254-3259.

Information as to the complications arising from the various Acts relating to subletting; instances in the cases of Bolton *v.* Keatinge, Mulcaire *v.* Joynt, and Bryan *v.* Briggs, all of which were decided in favour of the tenants, 3260-3266. 3283-3285——Opinion that the case of Kennedy *v.* Essex was decided on the question of consent and not on that of triviality, 3267-3276. 3286, 3287.

Great importance of the recent decisions in two cases of triviality, viz., White *v.* White and Cortallis *v.* Ward, as laying down new principles of interpretation of the Act of 1887; conclusion that the word "trivial" is open to objection, 3277-3282. 3288-3298.

[Third Examination.]—Further complete classified list of the 202 cases previously mentioned, handed in by witness, 3301-3306——Question as to whether there is any available means of arriving at the dicta of the judges other than that of reading the reports; belief that this is the only practicable way, 3307-3309.

Detailed statement regarding the preliminary facts in the great case of Adams *v.* Dunseath; evidence showing that it came before the Court of Appeal on the application of the landlord (Dunseath), owing presumably to his dissatisfaction with the fair rent fixed for the land rented by Adams by the Sub-Commission and subsequently affirmed by the Head Commission, 3315-3330——Enumeration of the five questions submitted by the Land Commission in their statement of the above case; grounds on which the Court of Appeal, while refusing to answer these questions, consented to extract and answer the purely legal matters connected therewith, 3331-3343.

Evidence showing the extreme contentions of the landlord and tenant in the foregoing case; the Court was unanimous in its decision against the tenant on his contention that the whole increase of the letting value of land belongs to the tenant when such increased value is brought about by work performed by him, 3344-3352——Decision of the Court of Appeal in regard to the first question that after the tenant has been recompensed for the cost of any improvements made by him, the increased yearly value, if any, shall be assessed between landlord and tenant at the judicial discretion of the Court below; extracts read hereon from judgments by Lord Chancellor Law and Sir Edward Sullivan, 3352-3368.

Details of the second question in Adams *v.* Dunseath relating to predecessors in title; reference to the case of Holt *v.* Harberton, tried under the Act of 1870, in which nearly all the judges held that a tenant could not get compensation for improvements made before the lease, 3369-3371——Statement that in Adams *v.* Dunseath four judges to three were of opinion that Section 7 of the Act of 1881 had widened the effect of the Act of 1870 in regard to predecessors in title and gave judgment accordingly, 3372-3385.

Examination in regard to the third question as to whether Section 4 of the Act of 1870 is now applicable in conjunction with the Act of 1881 in determining what is a "fair rent"; extracts read, showing that the opinion of six judges to one was that the Acts should be taken conjointly, the dissenting judge being the Lord Chancellor, 3386-3401. 3408.

Final history of the case of Adams *v.* Dunseath; decision of the Land Commission

Report, 1894—*continued.*

FitzGibbon, The Right Honourable Gerald, P.C. (Analysis of his Evidence)—*continued.*

that the rent of the tenant's holding fixed by the Sub-Commission was to be increased by the sum of 2*l.* in respect of the house built thereon by a former tenant, 3402, 3403 ——Reference to the fourth question as to whether the tenant was compensated by enjoyment under the lease; unanimity of the court in their opinion on this subject, 3407. 3409, 3410.

Explanation of the views of the several judges on the fifth question raised in the case of Adams *v.* Dunseath, viz., whether the house being built before the lease was granted precluded the tenant from any interest therein; grounds upon which witness concluded that the tenant was liable to pay a rent on the house, 3411–3426. 3497–3504.

Misapprehension existing in regard to the fifteen years term; statement that it does not relate to tenancy, but is a term of years during which the rent cannot be altered, 3427–3433 —— Details of the cases of Massareene *v.* Kelly and O'Kelly *v.* Kelly, in both of which the principle evolved in Adams *v.* Dunseath as to the conjoint reading of the Acts of 1870 and 1881 was applied, 3434–3437.

Examination in regard to the status of the tenant on title, witness explaining the powers of the Land Commission, as an "inferior court," or a court with a limited jurisdiction; inability of the Court to deal with cases other than those of landlord and tenant, 3438–3444 —— Reference to the cases of Hemphill *v.* Frazer and Kelly *v.* Raltey, where fair rents were fixed by the Land Commissioners, but were disallowed by the Court of Common Pleas on the ground that the former body had no jurisdiction owing to there being no tenant, 3446–3451.

Inability of the Court of Appeal to alter a decision of the Land Commission on a question of fact, although they may consider such conclusion a wrong one, provided it was proved by the lower Court to be within its jurisdiction: reference hereon to the case of Bruce *v.* Steen, 3452 —— Detailed argument as to the tenant's title after a fair rent is fixed between him and his landlord not being affected in any way; illustrations in the cases of Hemphill *v.* Frazer and Peyton *v.* Gilmartin, and in the judgments of Mr. Justice Lawson and Mr. Justice Holmes, 3453–3459.

Exceptional cases as to the conditions of leases which are applicable to constitute a tenancy from year to year; examples quoted in the cases of Barton *v.* Atkinson and Bolton *v.* Barry, 3460–3469 —— Statement that where several people divide a holding between them and arrange it so as not to alter the estate, they are considered to be *bonâ fide* occupation and are termed a "conjunct" lessee, 3470, 3471.

Explanation of the term "shrinkage"; opinion that it has increased litigation amongst tenants, 3471. 3476 —— Belief that the question of "leaseholder" or "tenant from year to year" is now immaterial, 3472–3475 —— Peculiarity of the enactment by which a man who made his contract of tenancy on 30th December 1882 was a present tenant, whilst a man making it on 1st January 1883 became a future tenant and was not entitled to apply for a fair rent, 3477, 3478.

Particulars of the case of Conroy *v.* Drogheda, which derives its importance from the judgment that no present tenancy shall be determined until possession is surrendered, 3479–3483. 3489. 3492 —— Question in the case of Jackson *v.* Hagan as to whether the consolidation of holdings and the alteration of rent constituted a future tenancy, 3484–3487 —— Reference to a decision in the case of McDonnell *v.* Blake as not being applicable as a universal rule, 3489–3492 —— Explanation that the Ulster custom did not apply in the judgment in Adams *v.* Dunseath, 3493–3496.

FitzGibbon, Lord Justice. Letter from Lord Justice FitzGibbon to Mr. Justice Bewley, dated 9th July 1894, confirming the views expressed by the latter as to the interpretation in the evidence of the former upon the question arising in the case of Adams *v.* Dunseath: comment in this letter upon certain statements in the evidence of Mr. W. F. Bailey, *pp.* 499, 500.

Correspondence in July 1894 between Mr. Bailey and Lord Justice FitzGibbon respecting certain statements in the evidence of the latter, to which exception is taken by the former, as regards some judgments of the Court of Appeal, *pp.* 581–583. 606.

Flannery v. Nolan. Reference to the decision in the case of Flannery *v.* Nolan as excluding a tenant from the fair-rent system when he takes a lease in which there are three sub-tenancies conveyed, *Bailey* 1263–1265.

Forms (*Applications, Originating Notices, &c.*) Information as to the dates of issue of different forms and the alterations therein from time to time; non-objection to certain details as to improvements, &c., being required, *Fitzgerald* 386–396 —— Reasons why the tenants are required to state the valuation of their holdings on the forms issued by the Land Commission, *Bailey* 1856.

Forms of particulars to be filled up in the originating notice of application by the tenant, the landlord and tenant jointly, the landlord, or the lessee, respectively, to the Court to fix a fair rent, *App.* 655–660.

Forms (*Applications, Originating Notices, &c.*)--continued.

Form of appointment of valuers, together with form of report of values, showing the particulars to be supplied, *App.* 658, 659——Colours of forms used by the Sub-Commissioners from 1881 to the present time, *ib.* 667.

Forms of Schedules showing the particulars to be filled in by the Lay Assistant Commissioner after inspection of the holding, *App.* 669–675.

Improvement required in the forms of report in use by Sub-Commissioners and appeal valuers, as well as in those used by the valuers to the county courts; fuller particulars to be supplied on several points, *Rep.* viii, ix.

FREE SALE:

Consideration of certain restrictions upon the operation of the free sale provisions of the Land Act of 1881; reference to the first section as intended to apply to sales in the open market, *Bailey* 1793–1804 - --Doubt as to there being any instances of tenants exercising their right to sell, pending ejectment, *ib.* 2832–2836.

Summary of certain provisions of the Act of 1881; subject to certain restrictions a tenant may sell his holding, but is precluded from sub-letting without the consent of his landlord, *Fitz Gibbon* 2996–2999. 3013.

Expediency of tenants generally having the right to sell in the open market without any right of pre-emption in the landlord, save in certain cases, *Bayly* 4275–4277. 4293, 4294.

Belief that the basis of the Land Act of 1881 was that the tenant was not in a position to contract freely, *Shaw* 8923–8927. 9197–9203——Evidence showing that no applications have been made in Kerry for fixing either a specified or a true value; opinion that the landlords allow their tenants to sell their tenancies for the best price they can get, and do not interfere unless the assignee is a notoriously bad character, *ib.* 8937–8945. 9223–9230.

Concurrence in the view that a tenant should be allowed to get the highest price he can for his tenancy, provided that the landlord does not object to the assignee, *Shaw* 8948–8952; *Heard* 9638–9641.

Submission by witness (as President of the Land Agents' Association) of a return of sales of tenants' interests in Ireland since the 1st January 1882; statement that even where the rents have been substantially reduced, the tenants get very large interests for their holdings, *Garvey* 12386, 12387. 12428 *et seq.* 12790–12083; *App.* 722, 723.

Particulars as to the sums realised by the sale of tenants' interests, the cases where the rents were judicial being distinguished from those where they were non-judicial, *Barnes* 12892–12927——Explanation respecting the return of sales of tenant rights in various counties of Ireland, as handed in by Mr. Garvey; this return does not represent the whole of the sales in any county, *Willes* 13009-13017.

Submission by witness of returns showing the sums paid since the 1st January 1882 for the tenant rights of farms held under judicial rents on estates for which witness is agent in Cork, Tipperary, Limerick, and Dublin, *Rochfort* 13018–13026; *App.* 724.

Provisions with regard to exclusions from and restrictions on the free sale provisions of the Land Acts, *App.* 685.

Tables submitted by Mr. Garvey and Mr. Rochfort containing sundry particulars respecting sales of tenants' interests since the Act of 1881, and showing the number of years' purchase, &c., *App.* 722–725.

Review by the Committee of the provisions of the Act of 1881 as regards the regulations and conditions subject to which the tenant may sell his tenancy for the best price that he can get, *Rep.* xv, xvi.

Result of the evidence of the several Assistant Commissioners that when the value is fixed it is fixed without any recognised principle and without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got, *Rep.* xvi.

See also *IMPROVEMENTS, PRE-EMPTION, &c. SUB-COMMISSIONS. TENANT RIGHT, &c. ULSTER.*

FUTURE TENANCIES:

Information as regards the exclusion of future tenancies from fair rents, with reference more especially to the termination of present tenancies upon the death of limited owners, *Bailey* 889–925·——Termination also of present tenancies where the middleman is ejected for non-payment of rent, *ib.* 926–930——Consideration of the facilities for contracting out of the Act of 1881 and for the creation thereby of future tenancies; importance hereon of the decisions of the Court of Appeal in the cases of Conroy *v.* Drogheda and Torrens *v.* Cooke, *ib.* 936–978.

Report, 1894—*continued.*

FUTURE TENANCIES—continued.

Peculiarity of the enactment by which a man who made his contract of tenancy on 30th December 1882 was a present tenant, whilst a man making it on 1st January 1883 became a future tenant, and was not entitled to apply for a fair rent, *FitzGibbon* 3477, 3478.

Desirability of a rule of law that a present tenancy once created should not be destroyed except by the wilful act or default of the tenant himself; great injustice for a tenant to be deprived of his interest in his holding because a middleman is ejected, *MacAfee* 5826–5831. 5911–5931.

Evidence showing that a considerable number of future tenancies have been created since the passing of the Act of 1881 by landlords reinstating their evicted tenants, *Shaw* 8908——Inability of witness to give any information as to the status of the future tenant other than that he has no power to have a fair rent fixed, *ib.* 8917–8923——Question as to the position of a tenant under a limited owner whose tenancy was determined; reference to a case in County Armagh where eighty-seven tenancies were made future owing to the eviction of the middleman, *ib.* 9112–9132.

Explanation as to the status of a "future" tenant, he being in a very much worse position than a "present" tenant, especially in that he is liable to eviction at the end of the statutory term, *Bewley* 10291-10293——Importance of providing some means by which the rents fixed under the 4th section of the Act, with regard to future tenants, can be recorded, *ib.* 10294——Evidence to the effect that a future tenant who submits to an increase of rent, acquires a statutory term; necessity of another increase or revision of rent in order to constitute a further statutory term, *ib.* 10791–10805.

Small number of "future tenancies" in witness' part of the country; disagreement with Mr. Trench's view that all "future tenants" should be brought within the scope of the Act of 1881, *Garvey* 12575–12580. 12833–12839.

Return containing explanations in connection with lettings to future tenants, and with their exclusion from the fair rent provisions of the Act, *App.* 680, 681.

Large number of future tenancies called into existence since the Act of 1881, these being excluded from the fair rent provisions of the Act, *Rep.* xvii——Very disadvantageous position of these tenants, an amendment of the present conditions being required, *ib.*

G.

Garvey, Toler R. (Analysis of his Evidence.)—Witness has been a practical farmer and land agent all his life, his experience extending chiefly over King's County, Queen's County, and Tipperary; acts as judge of the farms competing for the prizes offered by the Royal Dublin Society, and fulfils other functions with regard to experimental farms, 11846–11851. 12245 *et seq.*

Result of witness' experience that Irish farming is, on the whole, a profitable business at the present time; certainty, however, that the farmers have not been able to make money at the same easy rate since 1879 as they did before that year, 11852 *et seq.* 11996–12008. 12126–12132——Importance of the barley crop in King's County and Tipperary, the produce of two and a-half acres of barley usually paying the rent of a farm of twenty acres, 11865–11871. 12257–12270.

Great decline in the quality of store stock in witness' neighbourhood of late years; endeavour of the stock breeders to remedy this evil as much as possible, 11872–11875. 12008. 12191–12194——Practice of witness to allow for the occupation interest of the tenant when valuing holdings; opinion that the Sub-Commissioners also allow for it in their valuations, 11876–11879.

Statement that the tenants generally claim all the buildings on a holding, and that their claim is not usually disputed by the landlords; allowance made, when the holding is valued, for the cost of maintaining the buildings, 11880, 11881. 12227–12244——Custom of the landlords of the estates with which witness has been connected to contribute towards the tenants' improvements before the Land Act of 1881; statement that the tenants have done all the improvements since that Act, 11881–11900. 12020–12022. 12168–12171. 12271 *et seq.*

Doubt as to the tenants having experienced much difficulty in proving their improvements in Court, no reasonable claim being disputed by witness on the estates that he manages; belief that there is no reluctance on their part to come forward in support of their claims for improvements, 11901–11905. 12159–12168——Endeavour of witness, when valuing a tenant's improvements, to allow the tenant an ample percentage on the cost of his improvements; doubt how the balance of the increased letting value is dealt with by the Sub-Commissioners, 11906, 11907. 12172–12190.

Impression that the Sub-Commissioners, in cases of deterioration, value the land just as they see it; liability of the landlord, after a fair rent has been fixed, for the drainage charges, if any, that had previously been apportioned on the tenants, 11908–11913. 12013–12019. 12141–12143——View of witness that it would be a very great hardship, both on owners of properties and the inhabitants of towns, if town parks be converted into

Garvey, Toler R. (Analysis of his Evidence)—*continued.*

into agricultural holdings; considerable demand for town parks round the town of Birr, 11914–11919. 12083–12109.

Inadvisability of opening the Act to sub-letting of every character, 11920 ——Approval of the question being left to the discretion of the Sub-Commissioners as to whether holdings with old and disused mills on them should be excluded from the benefits of the Act, 11921, 11922.

Evidence to the effect that some agreements out of Court were made on the estates with which witness is connected, at the request of the tenants, but that all rents are now settled in Court; very small difference between the rentals under agreements and the judicial rentals, 11923–11930. 12147–12154——Decided opinion that the landlord's right of pre-emption should be maintained; experience of witness that the determining element in fixing the specified value is the price at which land has been sold by auction in the neighbourhood, 11931–11939.

Improvement in the prices now realised by the sale of the tenant's interest in his holding, 11940, 11941. 12154–12158——Opinion that the right of appeal should be maintained, both as regards value and as regards law, 11942, 11943.

Personal view of witness that on the expiration of the statutory term the rents should be regulated according to the prices of agricultural produce, the revision to take place every seven years, if desired by the landlord or tenant, and to be automatic; details of a scheme by which this could be accomplished, 11944–11960. 11987–11995. 12195 *et seq.*——Recommendation that, if the present system of fixing fair rents is to be continued, the cases should be heard in court without either side employing solicitors, as a very large proportion of the cost of procedure goes in law expenses; right of appeal to be retained, 11961–11966. 12196–12217.

Rule on the properties of which witness is agent not to give reductions to tenants who have judicial rents; reductions varying from 5 to 25 per cent. given to those who have not got judicial rents, 11967–11995. 12009–12012. 12133–12140——Denial of the statement that it is the rule on every estate of which witness is agent to insist on an increase of rent on the death of a tenant; when a tenant dies the opportunity is taken to revise the rent if it happens to be very low, 12022–12039. 12118–12125. 12144–12146.

Explanation that in the case of the ejectment of a tenant named Brown on Lord Bloomfield's estate, the landlord preferred a Protestant tenant to succeed, in order that the church might be kept open for the few Protestant tenants in the district, 12040–12047. 12144–12146——Absolute denial of the statement that witness interfered with the marriages of the tenants and increased the rent upon the marriage of a son or daughter who was likely to succeed to the farm, the only action taken being to refuse to recognise a son as tenant during the life of the father, 12048–12054. 12144–12146.

Objection of witness to the tenants keeping goats on Lord Bloomfield's and other properties, as these animals are very destructive to hedges and plantations; denial of the Rev. W. M'Keogh's statement that witness' bailiff shot some goats, 12023–12065 ——Estimate that not more than ten out of the 1,200 tenants on the properties that witness is connected with have been absolutely dispossessed since 1879; 12067–12079.

Disclaimer by witness of any knowledge of a case on Lord Bloomfield's property in which it is alleged that a man who built a limekiln on his farm, and drew limestone three or four miles to it, was stopped because he had not first obtained permission, and that the land had to lie waste for a year, 12080–12082. 12110–12117——Opinion, as regards the words "circumstances of the case, holding, and district" in the 8th section of the Act of 1881, that evidence as to the rents derived by middlemen from their sub-tenants should only be received by the Sub-Commissioners for just what it is worth, 12218–12222.

Impracticability of the suggestion that there should be distinct rules laying down a uniform system of valuing various sorts of farms, 12223–12226——Payment by the tenant, in the first instance, of the poor rates upon the gross value, land and buildings added together, the landlord allowing the tenant half the amount paid, 12235–12244.

Experience of witness that about one-third of the value of the gross produce of a farm would be a fair rent to pay to the landlord, 12245–12270——Contention that rent is never put upon the tenants' improvements, but that, on the contrary, an allowance is made, when fixing the rent, for the tenants' occupation interest, 12271–12331.

[Second Examination.]—Experience of witness that in fixing fair rents the smaller holdings are not rented higher than the larger ones, 12332–12334——Agreement with the view that where the tenant deteriorates the cultivating properties of the soil it is a hardship upon the landlord if the valuers fix the rent according to the condition of the land;

Garvey, Toler R. (Analysis of his Evidence)—*continued.*

land; no doubt that the appearance of the land does have an effect on the mind of the valuer, 12335–12346. 12374–12378.

Definition of "rack-rent" as the highest possible rent that can be obtained in the open market, the term having also been applied of late years to the rents of over-rented farms, 12347–12356——Evidence to the effect that the tenant's interest consists in his property in all his improvements, his occupation right, his right to sell, and the condition of the farm, 12358–12367.

Contention that the difficulties of working witness' scheme for the automatic revision of rents at the end of the statutory period, according to the rise or fall in prices, are not insuperable; reasons for disapproving of any shortening of the statutory term if the scheme cannot be carried out, 12368–12385. 12540–12554. 12663–12705. 12749–12756. 12819–12832——Submission by witness, as President of the Land Agents' Association, of a return of sales of tenants' interests in Ireland since the 1st January 1882; statement that even where the rents have been substantially reduced the tenants get very large interests for their holdings, 12386, 12387. 12428 *et seq.* 12790–12803.

Estimate that the average cost to the landlord of having a fair rent fixed is from 6*l.* to 8*l.* a case in the Sub-Comimssion Court, and about as much more in the event of appeal; complaint of the tenants that they cannot get through the Court for less than 3*l.*; 12388–12412. 12504–12513——Objection of witness to rents being fixed by arbitration; preference for a full hearing of the case in open court, 12398–12412. 12529–12539.

Impression that the Commissioners when fixing a fair rent do not make any distinction as regards old rents that have been unaltered for years, but go through the same course as for more recent rents, 12413 *et seq.*——Information as to the cases that have been in Court on the estates that witness is interested in, very few of them having been dismissed; the tenants who remained out of Court are, as a rule, lower rented than those who went in, 12415–12427. 12555–12574.

Further grounds for previously expressed opinion that the landlord's right of pre-emption should be maintained, 12445–12471. 12785–12789——Disapproval of sub-letting being thrown open; view of witness that where sub-letting has taken place without any protest on the part of the landlord the tenant should not be excluded from having a fair rent fixed, 12472–12479.

Decided belief that it would be very disastrous to the towns if the fields round about them were turned into agricultural holdings; reiteration of the opinion that town parks ought to be excluded from the Act, 12480–12498. 12810–12818——Approval of the right of appeal being maintained; probability that the general result of the appeals is the confirmation of the rents fixed by the Court below, 12499–12513. 12523–12529——Instance in witness' experience of a tenant receiving costs in an appeal case, 12514–12522.

Variation of the reductions made by the Court in the rents on the estates with which witness is connected from 10 to 25 per cent., 12562–12566——Small number of "future tenancies" in witness' part of the country; disagreement with Mr. Trench's view that all "future tenants" should be brought within the scope of the Act of 1881; 12575–12580. 12833–12839.

Statement that witness very seldom resorts to dispossession of a tenant, and that legal process for arrears is not resorted to without good reason, 12581–12588——Details as to witness' procedure in valuing a farm, it always having been based upon the same principles; estimate that the rent ought to be about one-third of the estimated amount of the produce, 12589 *et seq.*

Practice of witness, when calculating a fair rent, to always allow for the tenant's occupation interest, his system being to make the allowance proportionate to the length of time the tenant had been in occupation; belief that the occupation interest is generally allowed for by Irish landlords, 12613–12626. 12765 *et seq.* 12804–12809——Grounds for the argument that witness in his valuation of a holding for fair rent does give the tenant credit for the buildings, 12629–12663.

Evidence to the effect that witness, in cases of increased letting value due to tenants' improvements, divides the balance that remains after the tenant has been paid for his outlay between the landlord and tenant equally, 12705 *et seq.*——Probability that the fair rents, as calculated by witness, are about 15 per cent. higher than the rents fixed by the Sub-Commissioners, 12722 *et seq.*

Impression that the Sub-Commissioners do take the tenant's occupation interest into consideration when fixing fair rents, 12728–12748——Enumeration of the various landlords' associations that witness has subscribed to, he being a member at present of the Land Agents' Association of Ireland, and the Landowners' Association, 12757–12765.

Disapproval of the policy of the Land Act of 1881, as it went too far in abolishing the landlords' rights, 12782–12787——Reasonableness of the prices paid for tenant-right on adjoining

Garvey, Toler R. (Analysis of his Evidence)—*continued.*

adjoining farms being included under "all the circumstances of the case, holding, and district" under Section 8 of the Act of 1881; 12828.

Gault v. *Wilson.* Particulars respecting the case of Gault *v.* Wilson, the holding having been occupied under a fee-farm grant at a rent of 236*l.*, whilst Mr. Gault, as tenant, paid a fine of 1,315*l.*, or twenty-five years' purchase of the difference between the old rent and the new, *Bailey* 1104–1139——Decision of witness in the foregoing case that the fine should be taken into account in fixing a fair rent; grounds upon which this decision was over-ruled on appeal, the rent fixed by witness having been raised, *ib.* 1109–1138.

Goats. Objection of witness to the tenants keeping goats on Lord Bloomfield's and other properties, as these animals are very destructive to plantations; denial of the Rev. W. M. Keogh's statement that witness' bailiff shot some goats, *Garvey* 12023–12066.

Grass Seed. Opinion that the question of fair rent would not be affected by the kind of grass seed a farmer put in, whether the better and expensive, or the inferior grasses, *Cunningham* 5250–5253.

Greer, Edward. (Analysis of his Evidence.)—Was formerly a solicitor, and has been legal chairman to a Sub-Commission since 1881; is at present delegated to eleven of the northern counties, 8005–8011.

Evidence showing that witness was chairman of the Commission that decided the case of Adams *v.* Dunseath, that the case was presented to the Court as an Ulster tenant-right holding, and the house and improvements were therefore awarded to the tenant, but that it was not so represented when taken before the Court of Appeal, 8012–8016. 8125–8129——Examination in regard to sub-letting; suggestion that in case of trivial sub-letting the Sub-Commission should have power to admit tenants at discretion, 8017–8021. 8107. 8243–8245. 8266–8269.

Example of a case of great hardship in sub-division; belief that there is not so much risk of harm in sub-division as was formerly the case, but nothing under ten acres would be advisable, 8022–8030. 8167–8173. 8283–8316——Opinion that the Commissioners should be entitled to fix fair rents upon town parks, 8031–8034. 8122–8124. 8193–8195.

Doubt as to the correctness of the present system of the valuation of improvements; suggestion that the Ulster tenants' holdings should be valued in their entirety, inclusive of buildings, 8035–8038——Expediency of making the decision of the Sub-Commission final in all questions of value and of restricting appeals to questions of law, 8039–8042.

Views of witness upon the question of fixing rents openly in Court; reference to the number of agreements made during the sitting of the Donoughmore Committee in 1882 and signed by tenants in ignorance of the covenants of such agreements, 8043, 8044. 8131–8134. 8177, 8178——Desirability of reducing the statutory term to one of seven years, 8045–8048. 8061–8063. 8157–8163.

Concurrence in the suggestion that the reports of the Lay Commissioners should give more detailed information to landlord and tenant, 8051–8054. 8153–8156——Evidence showing that in purchases under the Encumbered Estates Court the rents have often been very much increased immediately after those purchases; example in the case of Adams *v.* Dunseath, 8055–8060.

Anomaly of the Rent Redemption Act by which a man who had a fee-farm grant in 1861 is in a different position to a man who got his grant before that date, 8064–8071——Statement of the hardships of the holders of perpetuity leases and fee-farm grants under the Rent Redemption Act, by which all the tenants' improvements are confiscated, 8072–8078. 8086——Illustration of the above-mentioned hardships in the case of McCrea *v.* Hamilton, decided on the authority of O'Hea *v.* Morrison, in which no allowance was made for the tenant's improvements, nor for a fine of 1,560*l.* which he had paid; explanation of a difference of opinion between witness and his colleagues, Mr. Jephcott and Mr. Garland, on the subject of this fine, 8078–8085. 8200–8210.

Examination in regard to mill-holdings; expediency of fixing fair rents on such holdings, 8087–8099——Evidence showing that by the Act of 1881, where a tenant sub-lets to cottier-tenants, as is frequently the case in Ulster, he is excluded from the Act; opinion that this sub-letting should not thus exclude him, 8100–8106.

Unimportance of presumption in regard to improvements owing to the obligation of tenants to bring proof of such improvements, exclusive of buildings which do not enter into the valuation; difficulties which arise in case of improvements made by a tenant's predecessors, 8108–8121. 8174–8176——Concurrence with Mr. Bailey's proposals respecting future procedure in non-contentious cases, 8130, 8131. 8135.

Examination respecting the procedure of witness in compensating a tenant for improvements made by him; opinion that in two-thirds of the cases the percentage allowed covers the whole expenditure, and that where an increased letting value accrues it goes

Report, 1894—*continued.*

Greer, Edward. (Analysis of his Evidence)—*continued.*

to the landlord, 8136–8152. 8317-8319— —Desirability of settling a greater number of cases out of Court, 8164–8166——Question as to the large number of "caretakers" in Galway who owe six or seven years' rent, and who, unless they pay off that arrear within six months, can never redeem and become "present tenants"; suggestion that the only remedy for these cases of peculiar hardship would be for Parliament to deal with them as with the crofters, 8179–8192. 8224-8242.

Belief that a fixed specified value is no protection to an incoming tenant, 8190–8199 ——Reference to the numerous cases of dispute arising from the reclamation of bog land; suggestion that such cases might be dealt with by the Chairman of the Sub-Commission, 8216-8223——Statement that the rents paid by sub-tenants are higher in Antrim owing to the houses being better, 8246-8257.

Sufficiency of the present legislation in regard to labourers' cottages on holdings, 8258-8265——Information as to the orders given by the Court during the first two years of the administration of the Land Acts in respect of labourers' cottages; belief that the sanitary authority had power to enforce such orders, 8270–8282.

[Second Examination.] Further evidence regarding the method adopted by witness in dealing with compensations for improvements; explanation that his lay colleagues are left absolutely free and unfettered, unless any legal question occurs, and that their judgment is quite independent of unofficial valuation, 8320–8336——Opinion that fee-farm grants and perpetuity leases stand on much the same footing as regards the decisions of the Sub-Commissioners, 8337–8342.

Further reference to the case of McCrea *v.* Hamilton; supposition that the tenant entered into the agreement with a view to furthering his own interest, 8343–8346—— Examination as to the grounds for the opinion of witness that a great number of agreements had been signed by tenants in ignorance of their provisions; admission that this opinion was founded to some extent on the untested statements of the tenants, 8347–8358. 8643-8653.

Argument upon the question whether the sitting of the Donoughmore Committee alarmed the Ulster tenants, and was the cause of so many agreements being signed out of Court; such was the general rumour, 8359–8367. 8382–8388. 8758–8761——Detailed examination showing that although 12,475 agreements were fixed out of Court during the sitting of the Donoughmore Committee there were considerably more during the following year, and that the numbers have been subject to great variation, 8368–8381——Belief that the oath of a tenant is as reliable as that of a landlord, and that Irish tenants are not untruthful witnesses, 8389–8401.

Inquiry as to the removal of Sub-Commissioners from one district to another; it is very exceptional for a Commissioner to be removed when half through an estate, 8402-8413——Advisability of establishing a rota to prevent the arbitrary removal of Lay Commissioners, 8414. 8419——Expediency of confining Commissioners to their own districts, 8414-8418——Reference to the power of a judicial Commissioner to remove legal Sub-Commissioners from district to district, 8420-8427.

Evidence showing the disadvantages under which Commissioners labour owing to the dearth of reports of Land Commission decisions; urgent necessity for complete authorised reports of cases decided by the Land Commission and the Court of Appeal, 8428-8445 ——Infrequency of cases of disagreement between witness and his colleagues; power of a Commissioner to report his dissent on the Minute, 8446-8453——Desirability of allowing litigants every information on the essential points of their cases, 8454-8458 ——Necessity for consolidating the statutes from 1860 to the present time, and of making their definitions more intelligible, 8459–8462.

Further reference to the difference in the decisions of the Courts as to whether Adams *v.* Dunseath was an Ulster-custom case; statement that the edict in that case is only applied to custom cases in regard to improvements, 8463-8480——Evidence showing that notwithstanding the Act of 1870 relating to tenants' improvements was acknowledged to be a failure, and the Act of 1881 was passed to supply a remedy, both Acts were applied conjointly in the case of Adams *v.* Dunseath to the disadvantage of the tenants, 8481-8497.

Examination as to the intention of the Legislature in regard to fixing a true value on a tenancy; opinion that the true value was intended to be fixed at the full competitive price, and that the tenant should not be compelled to take any price less than could be obtained in the market, 8498-8517——Reference to the case of John Robb against the trustees of the Marquis of Downshire, in which the buildings on the holding, although improved by the tenant, were taken into account in fixing the rent, because by law such improvements were unsuitable, by reason of their high value, 8518-8532. 8762-8782. 8855–8861——Statement that in fixing rents it is not usual to allow for any buildings made by the tenant unless so far as the outlay is suitable, 8521–8532.

Further details concerning the complicated system of presumption in regard to improvements; opinion that if a tenant swears that certain improvements have been made by

Greer, Edward. (Analysis of his Evidence)—*continued.*

by him, the onus of showing the contrary should lie with the landlord, 8533–8546—— Impossibility of a landlord when purchasing an estate under the Landed Estates Court obtaining a record of the improvements which have been made, 8547–8549. 8637–8642.

Consideration of the injustice to the tenant of the present system in regard to the apportionment of value between landlord and tenant, 8550–8562. 8571–8574——Belief that to insure the future prosperity of Ireland, tenants should be given every encouragement to improve their lands; possibility of telling holdings on which judicial rents have been fixed from their improved appearance, 8563–8570. 8635, 8636. 8673, 8674—— Testimony to the accuracy of Mr. Bailey's paper showing the exclusions from fair-rent provisions, 8575–8577.

Peculiarity of the arrangement by which a landlord gets increased rent for a farm in the vicinity of a county road, although the roads are kept up by taxes paid by the tenant, 8578–8592——Additional information as to the difficulty of the method of valuing land apart from the buildings thereon; suggestion that the whole should be included in the valuation, but that the value of any buildings belonging to the tenant should be afterwards deducted, 8593–8604——Explanation as regards the considerations which lead to the fixing of fair rents; that the fair rent is fixed on the basis of what would be paid by a solvent person taking possession, 8605–8612.

Belief that with the exception of old rack-rents and those fixed by purchasers in the Landed Estates Courts rent have not been much reduced since 1870; 8612–8622. 8827–8834. 8852–8854——Consideration of the causes which have led to so few applications for fixed rents; desirability of enabling every tenant to apply for a fair rent except in the case of demesne land, 8623–8634.

Further examination on the question of sub-division; belief that ten acres of land in the West of Ireland would be insufficient to support a man and his family, 8654–8664 ——Advisability of leaving cases of sub-division where the interest of the landlord would not be prejudiced to the discretion of the Sub-Commission, 8665–8672. 8728–8739——Evidence showing that many of the occupiers of small holdings in the West of Ireland depend for their rent on the earnings of their children in service in England and Scotland, 8675–8688——Opinion that in many instances landlords have raised no objection to sub-letting until the tenant has applied for a fair rent, 8689–8691.

Practicability of fixing a rent on town parks; contention that an agricultural rent would not create a tenant-right on such holdings, 8692–8695. 8783–8803——Reference to the case of Mr. Harper, a solicitor in Belfast, in which the question was raised as to whether rent should be charged on buildings erected before the granting of the lease, 8696–8703——Particulars respecting cases in which landlord and tenant had borrowed money for drainage purposes from the Board of Works, such loans being payable by instalments charged on the tenant's rent; this additional rent charge continued long after the loan had been discharged, 8704–8710.

Conclusion that the revaluation of an estate has never tended to reduce the rent, 8711–8717——Details of the case of Conyngham *v.* Boyle, which involved a modification of the Ulster custom, 8717–8722——Particulars of the case of Mr. Wilson in County Antrim, in which a fair rent of 120*l.* fixed by the Sub-Commissioners was increased to 130*l.* on the report of a Court valuer (Mr. Jephcott), 8723–8727.

Further evidence respecting the views of witness on sub-letting; contention that sub-letting should not prevent a tenant from having a fair rent fixed, 8740–8757. 8869, 8870——Belief that the decisions of different Sub-Commissioners as to fixed rents are not so much at variance as formerly; competency of the Sub-Commissioners to declare the true value of land and improvements, 8804–8814——Invariable practice of witness to make the tenant pay for any case of deliberate deterioration, 8815–8817. 8821.

Desirability of decreasing the judicial term of fifteen years to one of seven, 8822–8826——Grounds for desiring the abolition of fixing specified value; the highest tenant rights exist on the best managed estates, 8835–8846——Advisability of a return of the variations of rent on individual holdings, 8847–8851——Reference to two cases of residential holdings on which rents were fixed by witness; condition required as to their being used agriculturally, 8862–8868.

Griffiths' Valuation. Disinclination of witness to take Griffiths' valuation as a safe guide, it being only suitable for rough and general purposes, *Cunningham* 5009–5030. 5347–5349.

Report, 1894—*continued.*

H.

Harper v. *Robbins.* Grounds for the opinion that the tenant in Harper v. Robbins could not claim exemption from rent in respect to the buildings; explanation that a case has been stated for the Court of Appeal and is still pending, *Bewley* 11099–11112.

Harrison, Capt. J. Statement with regard to the cases on Captain J. Harrison's estate (where the tenants came to the Court to get a fair rent fixed after having agreed to a reduced rent with the landlord), that the further reduced rents were fixed by the Sub-Commission after careful inspection of the holdings, *MacAfee* 5693-5700.

Heard, Edward. (Analysis of his Evidence.)—Is a County Court valuer, assisting Judge Neligan at Cork; formerly worked with Judge Hamilton, and has had forty-five years' experience in farming, 9248-9254. 9350, 9351. 9541-9544. 9668-9672. 9856-9866.

Detailed information respecting the proceedings taken in making a valuation; the values of each field are scaled roughly on the spot, and credit is given to the tenant for any improvements made by him, 9255-9257. 9267-9275. 9339, 9340. 9738–9744. 9906–9910. 9925–9929. 9937-9939——Explanation of the method adopted in valuing reclaimed land, by which property proved by the Ordnance maps to have been reclaimed as far back as forty-eight to fifty years is not credited to the tenant, 9257-9262. 9315–9324. 9411-9436. 9519-9530. 9745-9760. 9853–9855.

Opinion that two valuers should be sent to make valuations, 9263-9266. 9312-9314. 9493. 10043–10046——Practice of the County Court judge to consider the details of the report submitted by the valuer previous to hearing the evidence of the landlord and tenant, 9276–9286. 9382-9385. 9852——Evidence showing that Judge Neligan frequently considers the case for some days before giving a decision, and that such decision is not always in accordance with the report of the valuer; reference hereon to Judge Shaw's method of procedure, 9287–9294. 9300-9305.

Infrequency of cases in which the valuer is requested by the judge to make a re-valuation; instance of a boundary case in which witness was sent back three times to value the property, 9306-9311. 9945-9947——Statement that the evidence taken in Court rarely alters the facts brought before the valuer on his inspection, 9295-9299. 9386-9388.

Discussion as to the fairest method of making a valuation in regard to buildings; practice to make a note of the buildings on a farm but to place no value on those which are claimed by the tenant, 9325-9330. 9337, 9338. 9404–9410. 9761–9783. 9911–9915. 9940–9944——Belief that improvements are generally made by the tenant, and that the passing of the Land Act has given the landlord less interest than ever in making any, 9331-9336.

Statement that prices enter into account in making a valuation; capability of witness to judge the question of prices by his experience on his five farms, 9341–9349. 9561–9565. 9965–9968. 10067–10070——Reference to the downward tendency of prices since 1879; opinion that this would have the effect of reducing rents fixed by the Land Commission from 1881 to 1884; 9352–9362. 9459–9461.

Examination as to cases in which rents are fixed by agreement; when brought into court such rents are mostly reduced, 9363–9370. 9451–9459. 9580–9583 ——Discussion as to the desirability, for certain reasons, of shortening the statutory term of fifteen years; belief, however, that it would have a tendency to unsettle tenants, and might lead to neglect of their lands during the last years of the term, 9371-9377. 9566–9577. 9591. 9707-9712. 10013, 10014. 10047–10058.

Infrequency of cases of wilful deterioration; instance of a case in which a tenant's rent was raised owing to wilful deterioration being proved against him, 9378–9381. 9572–9577——Evidence showing that there is usually a great difference between the valuations given by the landlord's and the tenant's valuers, 9389-9394. 9886–9888. 9960, 9961——Statement that a tenant generally pays a valuer a guinea per day, and that a valuer employed by a landlord receives three guineas daily, 9395–9403.

Experience that it is exceptional for a landlord to contribute towards drainage; in some instances no allowance can be made the tenant for drains because he has allowed them to become choked, 9437-9450. 9587–9590. 10059–10066 ——Impossibility of taking into consideration a competition rent in fixing a fair rent; practice of witness to allow the landlord about two-fifths of the gross produce on a dairy farm and one-third on a tillage farm, 9462–9469. 9531–9540. 9673–9677. 9690–9703. 9989–9995. 10071–10076.

Reference to two exceptional cases in which specified value was fixed at five and seven years' rent, respectively, on farms which had greatly deteriorated; in some cases twenty-

two

Report, 1894—*continued.*

Heard, Edward (Analysis of his Evidence)—*continued.*

two and even forty years' purchase are given, 9470-9485. 9613-9637——Examination as to the cause of so many cases being transferred from the County Court to the Land Commission; probability that it is owing to the objection of the landlords to having but one valuer, 9486-9492. 9603-9612——Suggestion that it would be an advantage if cases were heard in Court prior to the valuer's inspection of the property, 9494-9499.

Adequacy of the present system of fixing fair rents; opinion as to the rarity of divergencies in the Sub-Commissioners' views, 9500-9507——Disapproval of moving valuers from district to district, 9508-9510——Explanation that witness is paid for such days as he is acting as valuer, but receives no permanent salary, 9513-9518. 9930-9936——Experience of witness as to the effect on his farms of the fall in prices, and the great increase in the cost of labour during the last forty-five years; belief that the cost of labour does not affect small farmers, 9545-9560. 9578. 9584-9586.

Attention of witness called to the large number of appeals that have been made; they are more numerous than he had supposed, 9592-9602——Opinion that a tenant should be allowed to get the highest price he can for his tenancy, provided that the landlord does not object to the assignee, 9638-9641.

Further reference to the farms in the possession of witness; judicial rents are fixed on two, one is held on lease, one on a yearly tenancy, and one is owned by witness, 9642-9657——Information respecting the abatements witness has allowed his tenants, 9658-9667——Evidence showing that many of the rents reduced by witness were the old competition rents that prevailed before the Act of 1870; 9678-9689. 9704-9706. 9867-9875.

Practicability of making the decision of the Sub-Commission Court final in the case of an appeal respecting a fixed rent, 9713-9716——Examination regarding the difference in the form of report used by the Sub-Commission and that in use in the County Court, 9717-9727.

Proximity of roads to a farm not taken into account in the valuation, though an allowance is made to the tenant where a farm is difficult of approach, 9727-9737——Consideration given to external fences and roads in making a valuation, but no allowance made for internal fences and gates, 9784-9812. 9948-9959.

Further information as to the method pursued in compensating a tenant for improvements in the soil, reclamation, and drainage; example showing that, as a rule, a tenant is given 5 per cent. interest on his expenditure, 9813-9851. 9975-9983. 10026-10037——Statement that witness is permitted to act privately as valuer in addition to his County Court duties at Cork, and frequently values for landlords in the Sub-Commiseion Court; reference to an instance in which a rent, valued by witness for the landlord, was reduced by from 5 to 7½ per cent. by the Sub-Commission Court, 9876-9905. 9962-9964. 9968-9974.

Question as to the effect of the weather on a valuation; belief that it might influence an inexpert valuer, but that, as a rule, extreme weather is avoided, 9916-9921——Explanation that the time taken in making a valuation depends entirely upon the class of land to be valued, 9922-9924——Opinion that a tenant is not entitled to the whole advantage of his improvements because of the landlord's interest in the latent capacity of the soil, 9980-9982.

Statement that it is the practice to take water supplies into account in making a valuation, 9984-9987——Competency of witness to fix a fair rent, if necessary, on a town-park, 9996-9999——Advisability of fixing fair rents on farms which were originally mill-holdings but on which the mills have fallen into disuse, 10000-10004.

Examination as to the desirability of fixing fair rents in cases of sub-letting; belief that in many instances fair rents ought to be fixed, but not in the case of middlemen who often receive from their sub-tenants rents far out of proportion to those they pay themselves, 10005-10012.

Reference to the increased facility with which cases are now conducted by the Sub-Commission, 10015-10018——Attention of witness called to the difficulty, under the present system, of making a valuation without charging rent upon a tenant for his improvements, 10019-10042.

Home Farms. Specific exclusion from the Land Acts in the case of home farms, *Bailey* 994-1005——Belief that a farmer might take up a home farm under the Act of 1881 provided that he used it for his own occupation, *FitzGibbon* 3237-3238——Definition of a home farm as one that is not mainly worked for profit, *Bewley* 11005.

Description of home farm as excluded from the fair rent provisions of the Act, *App.* 681.

I.

IMPROVEMENTS:

1. *Expenditure upon Improvements on Holdings in Ireland mainly by the Tenants.*
2. *Conditions necessary in order that Tenants may claim for Improvements and may establish their Right to any Allowance in respect thereof when Fair Rents are being fixed.*
3. *Rules and Procedure generally of the Sub-Commissions as regards the Valuation of Improvements and the Question of Allowance to the Landlord or Tenant, respectively.*
4. *Statutory Provisions and Legal Decisions by which the Sub-Commissioners are guided.*
5. *Case of Adams* v. *Dunseath: Great Importance thereof.*
6. *Difficulties of Proof in the case of Tenants rather than of Landlords.*
7. *Presumption as to Improvements in the absence of Evidence: Question whether the Presumption should not always be in favour of the Tenant, subject to proof by the Landlord.*
8. *Suggestions as to the Allowance for Improvements being publicly recorded.*
9. *Varying Character and Value of Tenants' Improvements: Expediency of the fullest encouragement in the matter.*
10. *Conclusions and Recommendations of the Committee.*

1. *Expenditure upon Improvements on Holdings in Ireland mainly by the Tenants:*

Rule throughout Ireland that improvements are made by the tenants, though, outside Ulster, the latter are frequently at a great disadvantage through not having records on the subject, *Bailey* 1459–1470——Practice in the case of English managed estates in Ireland as to the improvements being made and maintained by the landlords; credit given them in respect thereof, though the maintenance may have been neglected, *ib.* 2380–2388.

General custom of the country for the tenant to maintain all the improvements and do the repairs, it being a hardship that he should have to prove them; opinion that they should be assumed to be the property of the tenant, *Bayly* 4047–4066.

Statement that improvements in Ireland are generally done by the tenants unaided, but that on many estates the landlords do the improvements, as on those of Lord Leconfield, the Duke of Devonshire, and the Duke of Leinster, *Cunningham* 4895–4905. 4940–4952——Belief that improvements are generally made by the tenant, and that the passing of the Land Act has given the landlord less interest than ever in making any, *Heard* 9331–9336.

Custom of the landlords of the estates with which witness has been connected to contribute towards the tenants' improvements, before the Land Act of 1881; statement that the tenants have done all the improvements since that Act, *Garvey* 11881–11900. 12020–12022. 12168–12171. 12271 *et seq.*

2. *Conditions necessary in order that Tenants may claim for Improvements and may establish their Right to any Allowance in respect thereof when Fair Rents are being fixed:*

Regulation as to the tenant's claim for improvements, where the valuation is not under 10*l.* a year, being specified on the back of the originating notice, though he is not excluded from claiming if he serves the landlord with notice a reasonable time before the hearing, *Fitzgerald* 47–49. 444–446.

Frequency of inaccurate and inadequate claims for improvements being made on the Schedules, the tenants being under much disadvantage as regards any rectification thereof, *Bailey* 1266–1278——Proof required before witness in Court as to the ownership of improvements generally by the tenant, before they are inspected by the lay Commissioners; frequent difficulty of legal proof in the case of reclamations, &c., *ib.* 1532–1554.

Exclusion of the tenant from allowance for improvements if he has not set them forth in the notice or if he has supplied inaccurate particulars; great difficulty under which he labours on this score, *Bailey* 1572–1584——Doubt as to the origin of the requirement that the tenant must specify on his notice a list of the improvements, *ib.* 1695–1700.

Way

IMPROVEMENTS—continued.

2. *Conditions necessary in order that Tenants, &c.*—continued.

Way in which it may be allowed to tenants to claim improvements, if they hav omitted to do so on the originating notice, *Bayly* 3627, 3628. 3788–3796——Instances of refusal of allowance for tenants' improvements through their not being stated on the originating notice; legal prohibition upon allowance when not so stated, *ib.* 4000–4006——Advantage of some provisions for preventing injustice to tenants through omission to claim improvements on the originating notice, *ib.* 4007–4011.

Absence of any obligation upon the landlord to set forth his improvements on the originating notice; belief that at first it was not necessary for the tenant to do so, *Bayly* 4136–4139.

Number of cases in which tenants have made improvements but have not claimed for them; impossibility of allowing for improvements that have not been proved in court, *MacAfee* 5385-5397. 5467-5472.

Occurrence of cases in which hardship has accrued to the tenant by the omission of improvements from the originating notice; power of the tenants, however, to appeal and have the omitted improvements considered by the Land Commission, *Bewley* 10429–10433.

3. *Rules and Procedure generally of the Sub-Commissions as regards the Valuation of Improvements and the Question of Allowance to the Landlord or Tenant, respectively:*

Information with respect to the rules and procedure in connection with claims for improvements and the means adopted by the Sub-Commissioners and Court Valuers in order to arrive at the amount to be allowed, *Fitzgerald* 441–493——Separate valuation by the Sub-Commissioners of the improvements, a deduction being allowed in respect of those which are made by the tenant, though the amount of such allowance is not made known to the latter when the judicial rent is fixed, *ib.* 534–566. 578, 579.

Evidence taken by the Sub-Commission Court from each party as regards improvements and their value, with reference to the allowance to be made on this score to the tenant in fixing the fair rent, *Bailey* 668–676——Explanation with reference to the questions taken into consideration in dealing with tenants' improvements of different kinds and the allowance made in cases of drainage, &c., *ib.* 1665–1677——Claims now allowed to be made for improvements made since 1870; frequent disallowance on the score of date, *ib.* 1939–1943.

Great variety of conditions and circumstances taken into consideration in deciding tenants' claims for improvements; frequency of contribution by landlords, whilst temporary remission of rent is sometimes allowed, *Bailey* 1956. 1966–1982.

Information with further reference to the process in calculating the allowance or percentage to the tenant for his expenditure on improvements, any increased letting value above such percentage, but not the increased letting value, going to the landlord, *Bailey* 2691–2713. 2764, 2765. 2780–2787.

Course pursued by witness' Sub-Commission in valuing tenants' improvements, these being frequently reduced in court, *Doyle* 2872. 2889–2892.

Full note taken by the lay Sub-Commissioners, when on the land, of all improvements which are marked on the map (those claimed by the tenant being set out on the originating notice), *Bayly* 3534. 3546–3550——Particulars as to the course adopted by witness in valuing the various classes of improvements, viz., "reclamation, draining, fencing and building," and as to the evidence obtained from tenants in respect thereof, *ib.* 3585–3618. 3637 *et seq.*; 3735 *et seq.*——Information as to the practice of witness in valuing land with reference to its capabilities of improvement and reclamation and in making allowance to the landlord for improvability, the tenant being credited only with the actual improvements made by him, *ib.* 3930–3975.

Frequent injury to tenants in getting only partial compensation for improvements or in getting none at all; corresponding gain to the landlords in such cases, *Bayly* 4015–4020. 4126–4130——Examination to the effect that witness gives value to the landlord for what the land is worth in its wild state according to its soil and improvability, regardless of the rent, but that he makes allowance to the tenant for all further increase of value through improvements or expenditure by him, *ib.* 4080–4125. 4154–4162. 4210–4242. 4263–4267——Different practice apparently of Mr. W. F. Bailey and Mr. Doyle as compared with the foregoing practice of witness; obligation upon him to follow the ruling of his legal Sub-Commissioner on legal points only, *ib.* 4080–4125. 4212–4217. 4240–4242.

Explanation respecting the practice of witness in dealing with minor improvements by tenants by allowing them a percentage upon the outlay, *Bayly* 4243–4262——Fairness in giving the increased letting value to the tenant, all the improvements being, as a rule, made by him, *ib.* 4268–4271.

IMPROVEMENTS—continued.

3. *Rules and Procedure generally of the Sub-Commissions, &c.*—continued.

Practice of witness when Assistant Commissioner to deal alike with larger and smaller improvements by tenants, subject to the rule of their being excluded if not proved in Court, *Cunningham* 4496, 4497——Frequent allowance by witness of 5 per cent upon the tenant's outlay, this fully representing the increased letting value through his improvements; very general allowance also to the tenant of any excess above 5 per cent., as in exceptional cases, *ib.* 4498–4506.

Explanation as to witness' views on the question of improvability; agreement with the principle laid down by Mr. Bailey that in dealing with increased letting value, and the interest that ought to be allowed to the tenant for it, the controlling element is the durability of the improvement, *Cunningham* 4534-4544——Grounds for the opinion that, although 5 to 8 per cent. is a fair allowance upon tenants' improvements on the land, 5 per cent. would be too high an allowance to give the landlord for the repair of a house, *ib.* 5030–5038.

Practice of witness in fixing fair rents to protect the tenants' improvements as much as possible; difficulty of increasing the annual letting value on the average Irish farm without great expenditure, except in the case of very wet or peaty land, *Cunningham* 5133-5154——Statement that witness has dealt with all improvements on the same principle, not having made any distinction between major or minor improvements, *ib.* 5152–5154.

Evidence to the effect that when a tenant's improvement has added more than 5 per cent. to the letting value of the land the landlord gets the benefit of the increased value beyond the amount that repays the tenant the cost of producing it, *MacAfee* 5373, 5374. 5473–5497——Reiteration of the statement that it is the practice in the case of tenant's improvements to give the landlord the whole of the increased value that accrues after the tenant's expenditure has been met; opinion that the tenant is entitled to the greater part of the increased value, *ib.* 5634–5644. 5715–5729. 5758–5782. 5932–5948.

Practice of the Sub-Commissioners to let the balance of the increased letting value due to improvements go to the landlord after making fair allowance to the tenant; rarity of cases, however, in which there is any balance for the landlord, *Doyle* 7366–7414. 7516–7537. 7587–7590.

Explanation as to the method by which witness arrives at the fair rent of a holding; statement that proved improvements are always protected in the rent, *Roberts* 7716–7738——Invariable practice of witness to allow tenants sufficient percentage to fully cover improvements made by them, *ib.* 7751.

Practice in cases of appeal to defer to the decision of the Court below as to which improvements belong to the landlord and which to the tenant, *Roberts* 7868–7874——Evidence showing that where the value of the improvement is less than the cost the tenant is allowed the whole benefit, *ib.* 7888–7895——Detailed examination as to the practice of witness in dealing with cases in which the improvements made by the tenant have increased the letting value of the land; the tenant is given the full benefit of the expenditure, *ib.* 7896–7924.

Doubt as to the correctness of the present system of the valuation of improvements; suggestion that the Ulster tenants' holdings should be valued in their entirety, inclusive of buildings, *Greer* 8035–8038——Examination respecting the procedure of witness in compensating a tenant for improvements made by him; opinion that in two-thirds of the cases the percentage allowed covers the whole expenditure and that where an increased letting value accrues it goes to the landlord, *ib.* 8136–8152. 8317–8319.

Further evidence regarding the method adopted by witness in dealing with compensations for improvements; explanation that his lay colleagues are left absolutely free and unfettered unless any legal question occurs, and that their judgment is quite independent of unofficial valuations, *Greer* 8320–8336——Consideration of the injustice to the tenant of the present system in regard to the apportionment of value between landlord and tenant, *ib.* 8550–8562. 8571–8574.

Information as to the method pursued in the Cork County Court in compensating a tenant for improvements in the soil, reclamation, and drainage; example showing that, as a rule, a tenant is given 5 per cent. interest on his expenditure, *Heard* 9813–9851. 9975–9983. 10026–10037——Opinion that a tenant is not entitled to the whole advantage of his improvements because of the landlord's interest in the latent capacity of the soil, *ib.* 9980–9982——Attention of witness called to the difficulty, under the present system, of making a valuation without charging rent upon a tenant for his improvements, *ib.* 10019–10042.

Evidence as to the identity of view between witness and Lord Justice FitzGibbon as regards the apportionment of the residue of the inproved letting value after due allowance has been made to the tenant for the improvements, *Bewley* 10198–10205. 10207 *et seq.*——Practice of witness in allowing for improvements to ascertain what the present value

IMPROVEMENTS—continued.

3. *Rules and Procedure generally of the Sub-Commissions, &c.*—continued.

value of the improvements is and to settle the rent in respect to it, giving such a sum as will ensure that the tenant is not rented on the value of his improvements, *Bewley* 10560 *et seq.*

Practice of witness to give the tenant full interest on his outlay for improvements, *Neligan* 11468–11471. 11544–11546. 11535 *et seq.*——Rough estimate that in cases of increased letting value due to tenants' improvements any balance that may remain, after an allowance of not less than 5 per cent. has been made to the tenant, is divided in the proportion of about three-fourths to the tenant and one-fourth to the landlord, *ib.* 11635–11654. 11784–11801.

Endeavour of witness when valuing a tenant's improvements to allow the tenant an ample percentage on the cost of his improvements; doubt how the balance of the increased letting value is dealt with by the Sub-Commissioners, *Garvey* 11906, 11907. 12172–12190——Contention that, in witness' experience rent is never put upon the tenants' improvements, but that, on the contrary an allowance is made when fixing the rent for the tenant's occupation interest, *ib.* 12271–12331.

Evidence to the effect that witness, in cases of increased letting value due to tenant's improvements, divides the balance that remains after the tenant has been paid for his outlay between the landlord and the tenant equally, *Garvey* 12705 *et seq.*

Practice of witness to give the tenant three-fifths and the landlord two-fifths of any increased letting value due to tenant's improvements that may remain after the tenant has been allowed about 5 per cent. upon his outlay, *Barnes* 12867–12872.

4. *Statutory Provisions and Legal Decisions by which the Sub-Commissioners are guided:*

Explanatory statement with reference to the provisions of the 8th section (Sub-Section 9) of the Act of 1881 as regards allowance for tenants' improvements when not personally compensated for; particulars hereon of the decisions of the Court of Appeal upon the five questions of law raised in the case of Adams *v.* Dunseath, *Bailey* 740. 748–867.

Consideration of certain provisions in the Acts of 1870 and 1881 upon the subject of improvements in connection with the question of allowance to the tenant (in the rent) in respect thereof; that is when he has not been already paid or compensated therefor by the landlord, *Bailey* 1486. 1531——Disallowance of claim for tenant's improvements if they are not suitable to the holding or are in excess of what is required, even though they increase the letting value; reference hereon to the decision in the case of Robb *v.* the Marquess of Downshire, *ib.* 1585–1590.

Particulars of the cases of O'Neill *v.* Cooper and Dyas *v.* Scott, showing that rent was put upon improvements made by the tenants under previous leases; effect hereon of the decision in the case of Adams *v.* Dunseath, *Bailey* 2399-2474——Case of Dyas *v.* Scott further adverted to with reference to the question whether the lease was not adequate compensation for any improvements made, *ib.* 2634–2644.

Details of the cases of Massareene *v.* Kelly and O'Kelly *v.* Kelly, in both of which the principle evolved in Adams *v.* Dunseath as to the conjoint reading of the Acts of 1870 and 1881 was applied, *FitzGibbon* 3434–3437.

Effect of the Act of 1870 to give the tenant, for the first time, a special property in his improvements, subject to certain exceptions in the 4th section of the Act: provision in the Act of 1881 for the tenant to have a fair rent fixed, no rent being assessed on improvements made by the tenant or his predecessors in title, *Bewley* 10192 *et seq.*

Evidence to the effect that the principle that a tenant might be compensated for his improvements by the use and profit of them for a certain time is not now recognised; definition of "emjoyment of improvements" as being in possession of them, although the enjoyment of the improvements made during the currency of a tenancy from year to year does compensate to some extent, *Bewley* 11218 *et seq.*——Statement that any improvements made during the occupancy of a lease are excluded from the rent; belief that on the expiration of the lease also the improvements are exempted from rent, *ib.* 11242 *et seq.*

List of important cases in the Courts on the subject of improvements and the claims of tenants in respect thereof, *App.* 667.

5. *Case of Adams* v. *Dunseath: Great Importance thereof:*

Unanimous decision of the Court of Appeal (Adams *v.* Dunseath) that the meaning to be attached to the word "improvements" was that given to it by the Act of 1870, *Bailey* 754–761——Division in the Court of Appeal upon the question of improvements made by a tenant or by his "predecessors in title;" judgment of the majority (four to

IMPROVEMENTS—continued.

5. *Case of Adams* v. *Dunseath: Great Importance thereof*—continued.

three) that a tenant was not debarred from his claim because of a break in the tenancy, *Bailey* 762-773.

Importance of the judgment of the Court of Appeal (Adams *v.* Dunseath) as to certain restrictions in Section 4 of the Act of 1870, applying to a tenant's improvements when a fair rent was being fixed; dissent of Lord Chancellor Law from this decision, *Bailey* 774-801. 834——Unanimous decision of the Court of Appeal that the enjoyment of improvements under a lease is not compensation, *ib.* 835-841.

Judgment of the Court by a majority of one (Lord Justice FitzGibbon) to the effect that improvements made before a lease were captured by the lease and belonged to the landlord; modification of the foregoing judgment by the decision in the case of Walsh *v.* Limerick, *Bailey* 842-857.

Further explanations in connection with the case of Adams *v.* Dunseath and the effect of the decision in giving to the landlord the whole of the increased letting value consequent upon expenditure by the tenant upon improvement, *Bailey* 1187-1207. 1489. 1494. 1498. 1531.

Detailed statement respecting the facts in the great case of Adams *v.* Dunseath; evidence showing that it came before the Court of Appeal on the application of the landlord (Dunseath), owing presumably to his dissatisfaction with the fair rent fixed for the land rented by Adams by the Sub-Commission and subsequently affirmed by the Head Commission, *FitzGibbon* 3139. 3315-3330——Enumeration of the five questions submitted by the Land Commission in their statement of the above case; grounds on which the Court of Appeal, while refusing to answer these questions, consented to extract and answer the purely legal matters connected therewith, *ib.* 3331-3343.

Evidence showing the extreme contentions of the landlord and tenant; the Court was unanimous in its decision against the tenant on his contention that the whole increase of the letting value of land belongs to the tenant when such increased value is brought about by work performed by him, *FitzGibbon* 3344-3352.

Decision of the Court of Appeal in regard to the first question, that after the tenant has been recompensed for the cost of any improvements made by him, the increased yearly value, if any, shall be assessed between landlord and tenant at the judicial discretion of the Court below; extracts read hereon from judgments by Lord Chancellor Law and Sir Edward Sullivan, *FitzGibbon* 3352-3368.

Details of the second question in Adams *v.* Dunseath, relating to predecessors in title; reference hereon to the case of Bath *v.* Harberton, tried under the Act of 1870, in which nearly all the judges held that a teneant could not get compensation for improvements made before the lease, *FitzGibbon* 3369-3371——Statement that four judges to three were of opinion that Section 7 of the Act of 1881 had widened the effect of the Act of 1870 in regard to predecessors in title and gave judgment accordingly, *ib.* 3372-3385.

Examination in regard to the third question, as to whether Section 4 of the Act of 1870 is now applicable in conjunction with the Act of 1881 in determining what is a fair rent; extracts read showing that the opinion of six judges to one was that the Acts should be taken conjointly, the dissentient judge being the Lord Chancellor, *FitzGibbon* 3386-3396. 3401. 3408.

Final history of the case of Adams *v.* Dunseath; decision of the Land Commission that the rent of the tenant's holding fixed by the Sub-Commission was to be increased by the sum of 2*l.* in respect of the house built thereon by a former tennant, *Fitzgibbon* 3402, 3403.

Reference to the fourth question, as to whether the tenant was compensated by enjoyment under the lease; unanimity of the Court in their opinion on this subject, *FitzGibbon* 3407. 3409, 3410.

Explanation of the views of the several judges on the fifth question, viz., whether the house being built before the lease was granted precluded the tenant from any interest therein; ground upon which witness concluded that the tenant was liable to pay a rent on the house, *FitzGibbon* 3411-3422. 3497-3504.

Witness, who was chairman of the Sub-Commission that decided the case of Adams *v.* Dunseath, explains that the case was presented to the Court as an Ulster tenant-right holding and the house and improvements were therefore awarded to the tenant, but that it was not so represented when taken before the Court of Appeal, *Greer* 8012-8016. 8125-8129——Further reference to the difference in the decisions of the Courts as to whether Adams *v.* Dunseath was an Ulster custom case; statement that the edict in that case is only applied to custom cases in regard to improvements, *ib.* 8463-8480.

Evidence purporting to show that notwithstanding the Act of 1870 relating to tenants' improvements was acknowledged to be a failure, and the Act of 1881 was passed to supply a remedy, both Acts were applied conjointly in the case of Adams *v.* Dunseath, to the disadvantage or the tenant, *Greer* 8481-8497.

Contention

IMPROVEMENTS—continued.

5. *Case of Adams* v. *Dunseath: Great Importance thereof*—continued.

Contention that the practice of the Land Commission is in accord with the judgment of Lord Justice FitzGibbon in "Adams *v.* Dunseath" that any improved value of the land remaining after allowing the tenant, in the rent, for his improvement works should be apportioned between the landlord and tenant, having regard to the tenant right of the latter, *Bewley* 10194–10206.

Production by witness of a letter from Lord Justice FitzGibbon in which the Lord Justice states that witness' interpretation of his evidence in regard to Adams *v.* Dunseath is correct; non-objection on the part of witness to the whole of the letter going on the minutes if so desired, although he would have preferred to omit the passage respecting Mr. Bailey, *Bewley* 10198–10206.

Restrictions under the decision in Adams *v.* Dunseath as regards claims for improvements under Section 4 of the Act of 1870, as incorporated with the Act of 1881; *App.* 684

Judgment of the Land Commission (as a court of appeal) in the case of Adams *v.* Dunseath; Order by the Court thereupon, dated 20th April 1883; *App.* 686 *et seq.*

6. *Difficulties of Proof in the case of Tenants rather than of Landlords:*

Omission of tenants, as a rule, to keep records of their improvements, this not applying to landlords; acceptance, however, of parol evidence as to improvements, *Bailey* 1218–1226——Difficulty on the part of landlords in proving maintenance of improvements, *ib.* 1461——Obstacles to estimating the number of cases in which tenants greatly exaggerate their improvements or fail in proving them; claim made in the great majority of cases, something being usually allowed, *ib.* 1925–1938.

Records kept by the landlords or their agents of improvements upon large estates, but not often upon the smaller estates; question of having no presumption either way in the latter class of cases, *Bailey* 2018–2026——Belief that in a very considerable number of cases before witness, his Sub-Commission has been unable to give the tenant credit for his improvements because he has been unable to prove them and because the presumption is against him, *ib.* 2256–2267——Careful record kept on the larger estates of the landlords' improvements and of the allowances of timber, slate, &c., to tenants for improvements, *ib.* 2389–2391. 2571–2573.

Frequent production by the tenants of accounts of their outlay on improvements; difficulty when the improvements have been made by their fathers, oral testimony being however accepted, *Bayly* 3587–3593. 3637–3639. 3660–3676——Relative difficulty of owners of small estates and of tenants in proving improvements; frequent instances of information through the tenants as to the supply of materials by the landlord, *ib.* 3889–3897——Great difficulty in tenants remembering all their improvements, whilst they keep no records; difficulty also in proving improvements by their predecessor in title, *ib.* 4131–4148.

Grounds for the conclusion that the necessity of giving legal proof of improvements often imposes hardship and injustice upon tenants; difficulty through the absence of records, *Cunningham* 4524–4529——Difficulty of the tenants in furnishing legal evidence of their improvements; although the presumption of improvements is in their favour in theory they are not much relieved by it in practice, *ib.* 4621–4630. 4688–4707. 4769–4778——Further information as to the hardship imposed upon tenants by the necessity of giving legal proof of their improvements; opinion that the presumption of improvement should be given entirely in favour of the tenant, with certain safeguards, *ib.* 5060–5083. 5155 *et seq.*; 5344–5346.

Ability of the landlords, generally, to prove the improvements they make, *MacAfee* 5597–5605——Certainty that in many cases there is very great hardship to the tenant on account of the necessity of legally proving improvements, *ib.* 5597–5610. 5617 *et seq.*; 5659–5662.

Difficulty of the tenants in proving their improvements due chiefly to the want of documentary evidence; belief that if the presumption of improvements were always in favour of the tenant the landlord could always protect his own interest, *O'Keeffe* 6179–6188. 6310–6312. 6404–6428. 6538–6546——Contention that tenants who have made improvements do often keep out of Court, especially if the improvements are more than twenty years old, *ib.* 6628–6635.

Further evidence in support of previous statement that the tenants experience great difficulty in proving their improvements; enumeration of the improvements that cannot readily be dealt with in Court, *O'Keeffe* 6757–6793. 6814–6825.

Inability of the smaller landlords to prove their improvements in some cases, *Doyle* 6884–6888——Doubt as to the tenants having much difficulty in proving their improvements to the satisfaction of the Court; frequent impossibility, however, of proving drainage with exactitude, *ib.* 6937–6650. 7002–7054——Disinclination of witness to say whether a tenant who had a fair rent fixed, but who failed for want of witnesses to prove all the improvements that he was then entitled to, would be barred from going into the matter again in Court, *ib.* 7063–7065.

Report, 1894—*continued.*

IMPROVEMENTS—continued.

6. *Difficulties of Proof in the case of Tenants rather than of Landlords*—contd.

Unimportance of presumption in regard to improvements owing to the obligation of tenants to bring proof of such improvements, exclusive of buildings which do not enter into the valuation; difficulties which arise in case of improvements made by a tenant's predecessors, *Greer* 8108-8121. 8174-8176——Impossibility of a landlord when purchasing an estate under the Landed Estates Court obtaining a record of the improvements which have been made, *ib.* 8547-8549. 8637-8642.

Experience of witness that the tenants have no difficulty in regard to proving their improvements in his Court; he is not aware of any case in which the tenant's word as to his improvements has been disputed, *Neligan* 11459-11466. 11547-11555. 11674-11680. 11746-11759——Belief that the records of money or material allowed to the tenants for improvements are very well kept on large estates, but not on small ones, *ib.* 11547-11549. 11672-11676——Occurrence of cases in which allowances in the shape of remissions or temporary reductions of rent were given to the tenant as a compensation for improvements, *ib.* 11550-11555.

Doubt as to the tenants having experienced much difficulty in proving their improvements in Court; no reasonable claim being disputed by witness on the estates that he manages; belief that there is no reluctance on their part to come forward in support of their claims for improvements, *Garvey* 11901-11905. 12159-12168.

Result of witness' experience that the tenants have no difficulty in proving their improvements, except perhaps in cases of reclamation made many years ago, *Barnes* 12874-12878——Large number of cases in which the claim made by the tenants for improvements is too wide or too large, *ib.* 12882-12886.

7. *Presumption as to Improvements in the absence of Evidence: Question whether the Presumption should not always be in favour of the Tenant, subject to proof by the Landlord:*

Proviso in the Act of 1870 that in cases not subject to the Ulster custom the presumption as regards improvements shall be in favour of the tenant; numerous and wide exceptions to this provision, so that the presumption is practically with the landlord, *Bailey* 858-867——Statement with further reference to the state of the law in Ulster and out of Ulster, respectively, as regards the presumption being in favour of the landlord or of the tenant in the matter of improvements; hardships in many cases through the tenants being unable to prove their improvements, *ib.* 1208-1232——Conclusion that in the great majority of cases throughout Ireland the improvements are made by the tenants; question hereon whether the presumption to the effect should not be made general, subject to the landlords proving their own improvements, *ib.* 1211-1232.

Explanatory statement as to the extent to which the presumption in regard to improvements is in favour, respectively, of the landlord and of the tenant; onus upon the tenant in certain cases to produce evidence, *Bailey* 2002-2017——Further statement as to the position of the tenant on the score of presumption in respect of improvements; practical exclusion of claim for all improvements made before 1850, save buildings and reclamation, *ib.* 2475-2479.

Approval of the presumption as to buildings and other improvements being generally with the tenant, *Bayly* 3624-3626. 3636. 4326-4328——Expediency of the presumption as to improvements being always in favour of the tenant, *Cunningham* 4530-4532——Decided opinion that as regards evidence of improvements the onus of proof ought to be thrown in all cases upon the landlord, *O'Keeffe* 5999, 6000.

Evidence to the effect that outside Ulster there is no presumption of improvements for the tenant before 1850, a certain presumption between 1850 and 1870, and an unqualified presumption since 1870, the burden of proof necessary to displace the presumption testing on the landlord, *Doyle* 7417-7459. 7528-7533. 7569-7586.

Further details concerning the complicated system of presumption in regard to improvements; opinion that if a tenant swears that certain improvements have been made by him the onus of showing the contrary should be with the landlord, *Greer* 8533-8546.

Non-objection to a general rule of law that the presumption should be that improvements increasing the value of the holding on the tenants, unless the landlord proves the contrary, *Nehigan* 11746-11759.

Regulations with respect to presumption as to ownership of improvements, with exceptions from such presumptions where Ulster tenant right does not exist, *App.* 684.

8. *Suggestions as to the Allowance for Improvements being publicly recorded:*

Statement as to the Sub-Commissioners' reports not showing what allowance has been made to the tenant in respect of the increased letting value through his improvements, *Fitzgerald* 80-84. 173-177——Non-objection to the tenant being supplied with information

IMPROVEMENTS—continued.

8. *Suggestions as to the Allowance for Improvements being Publicly recorded*—contd.

mation as to the allowance made to him in respect of improvements, there being a detailed valuation on the subject, *Fitzgerald* 534–566. 578, 579.

Approval of the amount allowed off the rent in respect of improvements being set forth on the fair rent order, *Bailey* 1300–1304. 1701, 1702.

Entire agreement with the recommendations of the Select Committee of the House of Lords in 1882 and 1883 in favour of its being clearly shown what sum should be deducted from the rent in respect of the tenant's improvements; dissent from the objections raised hereon by Mr. Justice O'Hagan and the other Land Commissioners in 1883, *Bailey* 1727–1730——Approval of a record of the amount allowed to be deducted for each different class of improvements, *ib.* 1730–1736.

Facility of arranging for showing on the back of the fair-rent order the allowance for improvements, *Bailey* 1737, 1738——Way in which a record of what is allowed for improvements would operate in preventing appeals, *ib.* 2141–2143.

Approval of the requirement as to endorsement of the particulars of improvement upon the originating notice, an adjournment being always allowed on application with a view to the particulars being supplied, *Bayly* 3994–3999——Grounds for objecting to the tenant being supplied with information as to the full letting value and the allowance for improvements; expediency of their being told only the fair rent, as less likely to lead to appeals, *ib.* 4339–4350.

Non-objection of witness, personally, to tenants being informed in cases of appeal of the full letting value that has been fixed, the amount allowed off for improvements, and the fair rent; belief, however, that it would immensely increase the work without giving any compensating advantage to the tenants, *Cunningham* 4675–4687.

Suggestion that the amount allowed for each improvement should be shown on the face of the report made by the Land Commission valuer when settling the rents at the end of the statutory term, *Bewley* 10251, 10252——Insufficiency of the registration of the improvements for which the landlords and the tenants have received credit, *ib.* 10276–10278.

Non-objection to the improvements established by the evidence, and the value assigned to them in the settlement of the rent being distinctly specified; grounds for the opinion, however, that if evidence of improvements is to be preserved by endorsement on the order, legislation will be necessary, *Bewley* 11343–11357.

9. *Varying Character and Value of Tenants' Improvements: Expediency of the fullest Encouragement in the matter:*

Several classes of improvements for which claims are made; doubt as to the relative amount of claims in Ulster and Munster, *Bailey* 1944–1948——Frequent instances of tenants' improvements not being worth the cost incurred, *ib.* 2557–2561. 2569, 2570.

Instances of non-allowance for tenants' improvements, so called, as when they are not worth the outlay, *Bayly* 3597–3605——Difficulty in estimating the increased letting value per acre by outlay on drainage or other improvements; frequency of large outlay without any corresponding increase of value, *ib.* 3708–3729.

Desirability of the tenants being encouraged in every possible way to make improvements on their holdings, *MacAfee* 5748 *et seq.*——Decided opinion, in view of the fact that improvements are necessary and are generally made by the tenant, that a more liberal provision should be made to the latter as to the letting value resulting from them; principle of witness to allow the tenant 5 per cent. on his outlay, *ib.* 6160–6178. 6429 *et seq.* 6462–6494. 6529–6533.

Probability that if all the improvements made in Ireland were taken into account it would be found that they had not increased the letting value of the holdings even 3 or 4 per cent. on the outlay; very large number of improvements claimed for that are not worth their cost, *Doyle* 6874–6882. 6944–6950.

Experience of witness that the improvements made on holdings are often not worth their alleged cost, *Roberts* 7673–7679. 7710 *et seq.*——Importance of improvements in order to enable Ireland to compete agriculturally with other countries; statement that the improvements have so far been generally made by the tenants, *ib.* 7875–7887. 7945–7947——Belief that the tenant's claim to improvements is very often over-estimated, *ib.* 7985–7988.

Belief that to insure the future prosperity of Ireland tenants should be given every encouragement to improve their lands; possibility of distinguishing holdings on which judicial rents have been fixed from their improved appearance, *Greer* 8563–8570. 8635, 8636. 8673, 8674.

Report, 1894—*continued.*

IMPROVEMENTS—continued.

9. *Varying Character and Value of Tenants' Improvements, &c.*—continued.

Opinion that nothing short of legislation could transfer any of the improved letting value to the tenant, over and above the annual allowance made to him in respect of his improvement works, *Bewley* 10226, 10227——View of witness that a great deal of the discussion as to the apportionment of the increased letting value is purely academic, as in many cases nothing would remain after a due allowance had been made to the tenant, *ib.* 10423-10428.

Statement that as a rule the tenants' improvements have not been on a very large scale on the farms that witness has valued, there being much more deterioration than improvement of the land, *Barnes* 12860, 12861. 12887-12890.

10. *Conclusions and Recommendations of the Committee :*

Consideration of the provision in the Act of 1881 that no rent is to be allowed or made payable in respect of the tenant's improvements; review more especially of the judgment in the case of Adams *v.* Dunseath, and of the great variety of practice under this judgment in the different Sub-Commission Courts, *Rep.* iii. vi-xiii——Far-reaching character of the decision of the Court of Appeal in this case; comment thereupon by the Committee, *ib.* iii. vii.

Extreme surprise with which the Committee have learned from several official witnesses that the general practice is to give the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements, *Rep.* vii, viii——Instances of the tenant being allowed a share in the value of improvements beyond the interest on his outlay, *ib.* vii, viii.

Reversal, by the judgment in the case of Adams *v.* Dunseath, of the law as laid down by the Land Commission, whilst the judgment formulated a complicated rule of law on apportionment of the value of the tenant's improvements, *Rep.* vii——Conclusion that the general practice is to give the tenant a percentage on his outlay and nothing more, *ib.* viii. xi.

Summary of the views of Mr. Justice Bewley to the effect that on the score of allowance for occupation interest the judgment in the case of Adams *v.* Dunseath is carried out as regards the tenant receiving his due share of the remainder of the value of his improvement after obtaining a percentage on his outlay, *Rep.* viii. xi ——Conclusion that the intervention of Parliament is urgently required to define and protect the interest of the tenant and to secure coherent administration of the law, *ib.* viii. xiii.

Expediency of the valuation showing any deductions from the fair rent in respect of the improvements of the present tenant, distinguishing between deductions of the letting value of tenant's buildings and of other improvements not affecting the capacity of the soil, *Rep.* viii.

Almost invariable provision by Irish tenants of farm buildings and other improvements which would in England be regarded as a necessary portion of the equipment of a farm, *Rep.* ix——Considerable difficulty in fixing a fair rent, by reason of the question of value and legal ownership of improvements, *ib.*

Review by the Committee of the several difficulties in connection with the claims of the tenants as regards compensation; opinion that the intention of the Legislature has not been carried into effect by the judgment of the Court of Appeal in the case of Adams *v.* Dunseath, whilst it seems to have been defeated in the practice of the Courts in fixing rents, *Rep.* ix-xv——Summary of the more important classes of improvements in respect of which a tenant cannot claim compensation under the Act of 1870, *ib.* ix, x.

Further review by the Committee of the judgment in the case of Adams *v.* Dunseath, with special reference to the provisions on the subject in the Act of 1870 as well as in the Act of 1881; decision of the majority of the judges that the provision in the Act of 1881 related only to such improvements as the tenant could claim compensation for under the Act of 1870, *Rep.* ix-xiii——Opinion that the intention of the Legislature has not been carried into effect by this judgment, *ib.* xiii.

Reference to the definition of improvements in the Act of 1870 as having been extended to the Act of 1881, the term "improvement" being declared to be "any work which, being executed, adds to the letting value of the holding," *Rep.* xi.

Summary of the proceedings in Parliament with reference to the provisions in the Land Bill of 1881, showing the several amendments proposed in the House of Commons and the House of Lords, respectively; final adoption of Sub-section 9, Section 8, declaring that "no rent shall be allowed or made payable in respect of improvements made by the tenant or his predecessors in title," *Rep.* xi-xiii.

Proposition

Report, 1894—*continued.*

Improvements—continued.

10. *Conclusions and Recommendations of the Committee*—continued.

Proposition that it cannot equitably be argued that because certain improvements do not fulfil the technical legal conditions the landlord is entitled to charge rent upon them as if he had made them or had paid for them out of his own pocket, *Rep.* xiii.

Reference to agricultural improvements as of vital consequence to the welfare of Ireland; necessity of the tenants being encouraged to make them by being secured, through the interference of Parliament, in the enjoyment of the value resulting from their expenditure and labour, *Rep.* xiii.

Concurrence in certain recommendations of the Select Committee of the House of Lords in 1882 as to the amended procedure desirable to be adopted by the Land Commission with a view to fuller information on the subject of improvements as affecting the question of judicial rents, *Rep.* xiv.

Grounds upon which the Committee recommend that until the contrary is proved all improvements shall be deemed to have been made by the tenant or his predecessors in title, *Rep.* xiv, xv.

Frequent loss of valuable improvements to tenants through difficulties of proof, *Rep.* xiv——Facility of proof, through record in the estate books, when improvements are made by the landlord; limited number of such cases, *ib.* xv.

Inoperativeness of the provision for the registration of tenants' improvements in the County Court, *Rep.* xv——Recommendation that when, on the hearing of a fair-rent application, it has been determined that improvements belong to a tenant, the record of this fact by the court should be made evidence in subsequent proceedings, *ib.*

Great importance of the right of free sale, as in Ulster, in stimulating improvements, whilst they are checked elsewhere by the right of pre-emption, *Rep.* xvi, xvii.

See also *Appeals and Re-hearings. Buildings. County Courts. Deterioration of Holdings. Drainage. Fair Rents. Fences. Inspection of Holdings. Judgments and Legal Decisions. Landlords. Leases. "Leinster" Leases. Lime. Limited Owners. Mairs* v. *Leckie. Manure, Reclamation of Waste Land. Robb* v. *Downshire. Stuart, H. Villiers. Sub-Commissions. Tenant Right and Occupation Interest. Ulster. Valuers and Valuation.*

Initiation of Proceedings. Initiation either in the Civil Bill Court (*alias* County Court) or in the Land Commission (through the Sub-Commission courts) of the proceedings to have a fair rent fixed; conditional right of transfer to the latter when commenced in the former, *Fitzgerald* 11–13.

See also *Fair Rents. Originating Notice. Sub-Commissions.*

Inspection of Holdings. Practice after the hearing before the Sub-Commission as to the inspection of the holding by the two lay Commissioners and as to the detailed and elaborate character of their report to the Commissioners with reference to the various classes of land, the improvements found to exist, the actual improvements allowed, &c., *Fitzgerald* 50–92.

Information as to the procedure of the lay Sub-Commissioners (after evidence has been taken in court presided over by a legal Sub-Commissioner) in their inspection of each holding in order to procure the data for the fixing of a fair rent, *Bayly* 3530 *et seq.* ——Great variation in the time occupied by each inspection; average of about three cases a day, *ib.* 3551–3554. 3690–3693——Note made upon the map of the different kinds of soil and of the quantities, the land being classified and the produce being considered, *ib.* 3557. 3694–3698. 3704–3707.

Decided opinion that it is necessary to inspect the particular holding in every case when fixing fair rents, *MacAfee* 5381–5384.

See also *Fair Rents. Statutory Term. Sub-Commissions. Valuers and Valuation.*

Intestacy. Very great number of cases in which administration is not taken out, the tenants not being aware that this is necessary for the completion of their title, *Bailey* 2669–2680——Desirability, in view of the decision of the Exchequer in the case of Fox *v.* Langan, of legalising the practice of the court in appointing a limited administrator for a deceased tenant, *Bewley* 10135–10138.

Doubtful and unsatisfactory state of the law in connection with questions that may arise in connection with receipts for rent and the fixing of a fair rent when a tenant dies intestate, *Rep.* xxii.

J.

JUDGMENTS AND LEGAL DECISIONS:

List of leading cases and judgments which the Commissioners have most occasion to refer to upon disputed questions in connection with improvements, town parks, pasture, demesne lands, sub-letting, &c., *Fitzgerald* 297-299——Records kept in the office of the judgments of the Land Commissioners and of the Sub-Commissioners, *ib.* 596-605.

Decision practically by witness, as legal Commissioner, of all questions of law, the two lay Assistant Commissioners accepting his ruling on legal points, *Bailey* 677-680. 685-687. 708, 709——Several ways in which changed interpretations of the Land Acts and contradictory decisions of the judges have operated disadvantageously to the tenants, as in the case of town parks, accommodation land, &c., *ib.* 1600-1622.

Degree of conflict between recent and former decisions of the Court of Appeal; prejudicial effect of certain recent decisions as regards dairy and grazing farms in Munster, *Bailey* 1751-1771——Statement as to the judgments of the Land Commission having been omitted till lately from the "Law Reports;" consequent uncertainty and difficulty in future years, *ib.* 1772-1779——Non-objection to an official staff of reporters for reporting the judgments of the Sub-Commissioners, *ib.* 2158-2160.

Explanation that as regards judicial interpretation of the Act witness has not intended to criticise the Court of Appeal in any way, *Bailey* 2651-2654.

Attention drawn to the non-existence of any authentic version of land judgments, the Council of Law reporting only such cases as they consider useful, *FitzGibbon* 2949-2953.

Statement that the Sub-Commissioners ascertain the development of the law as laid down by the Land Commission and the Court of Appeal by reading the reports, which however do not contain all the cases; desirability of an authorised report of every judgment, *Doyle* 7242-7253——Advisability of acquainting litigants with the data which led to the decisions of the courts, *Roberts* 7854-7857.

Concurrence in the suggestion that the reports of the lay Commissioners should give more detailed information to landlord and tenant, *Creer* 8051-8054. 8153-8156——Evidence showing the disadvantages under which Commissioners labour owing to the dearth of reports of Land Commission decisions; urgent necessity for complete authorised reports of cases decided by the Land Commission and the Court of Appeal, *ib.* 8428-8445——Desirability of allowing litigants every information on the essential points of their cases, *ib.* 8454-8458.

Evidence showing that the only means of ascertaining the decisions of the Land Commission is by reading such cases as are given in the "Law Reports" or by hearing a conversational account supported by good authority, *Shaw* 8877-8879——Belief that most of the important decisions of the Land Commission are reported either in the "Law Reports" or the "Irish Law Times"; tendency of the "Law Reports" to give irrelevant matter, *ib.* 8882-8893.

Satisfaction of witness with the way in which judgments in land cases are now reported, all his important decisions being accessible to his Sub-Commissioners, the profession, and the public; desirability, however, of a barrister's authenticated report of leading cases, *Bewley* 10096-10105——Probability that the reason why the Land Commission cases did not appear in the authorised reports formerly was that there were so many other cases to be reported that there was no room for them, *ib.* 11396 11404.

Belief as to the efficiency of the system of reporting the cases that are brought before the Land Commission; occasional report of the proceedings in witness' court by one of the younger legal gentlemen present, *Neligan* 11519-11526.

Extremely inadequate arrangements for reporting the judgments of the Land Commission; considerable inconvenience thereby, *Rep.* xxii.

K.

Kenmare Estate. Conclusion that the number of cases of fair rent heard by witness during 1893 was due to the action of the tenants on the Kenmare Estate; evidence showing that although the rents of these tenants were all raised in 1878, they did not take advantage of the Land Act of 1881 to apply for a reduction, *Shaw* 8961, 8962.

Kennedy, Andrew. Explanations respecting the case of Mr. Andrew Kennedy, of Ballymena, in which, though a fair rent was fixed, Mr. Kennedy was ruled out of court on the ground that the sub-letting was trivial, *Bailey* 1169-1186. 1305-1319.

Kerry. Inability of Kerry landlords to buy tenancies owing to their straitened circumstances, *Shaw* 8946, 8947——Examination as to the varied quality of the land in Kerry, *ib.* 8953-8955——Testimony from judicial experience that improvements in the county have

Report, 1894—*continued.*

Kerry—continued.

have chiefly been made by the tenants, *Shaw* 8956, 8957 — Reference to the large quantity of reclaimed land in the county, *ib.* 8958.

Improbability of the cost of an appeal keeping a Kerry man from the Court; belief that the fear of an ejectment owing to arrears is a more likely reason, *Shaw* 8963-8965 ——Practice of the valuer in Kerry to assume that all improvements have been made by the tenant; statement that the landlords in the county very rarely claim any improvements except an occasional question of drainage, *ib.* 8995-9003. 9097-9100. 9135-9138.

Capability of the Kerry peasants to thoroughly look after their own interests, *Shaw* 9064. 9137, 9138——General impression of witness that there has been a great fall in the value of Kerry cattle, *ib.* 9070-9080——Statement as regards exclusions that in Kerry such cases have mostly been questions of conacre, *ib.* 9101, 9102. 9111.

Number of applications to fix fair rents which have been excluded from the Acts, *App.* 720, 721.

L.

Labour (*Rate of Wages*). Necessity of taking the increased cost of labour into account in recent rent fixing; complaints as to scarcity of labour in County Down, *Cunningham* 4631, 4632. 4856, 4857——Opinion that the cost of labour has increased generally; reference to the use of agricultural machinery as a means of overcoming the difficulty of obtaining assistance in busy seasons, *Roberts* 7765–7787. 7804–7806. 7940–7944—— Experience of witness as to the effect on his farms of the fall in prices and the great increase in the cost of labour during the last forty-five years; belief that the cost of labour does not affect small farmers, *Heard* 9545–9560. 9578. 9584–9586.

Labourers' Cottages. Exclusion from the Land Act if a tenant sub-lets since 1883 a part of his holding for a cottage for a labourer, *Bailey* 1903–1924——Consideration of certain provisions in the Acts of 1881 and 1887 on the subject of sub-lettings for labourers' cottages; reference especially to Kennedy's case, *ib.* 2114–2126.

Explanation in connection with the working of Section 18 of the Act of 1881, as regards labourers' cottages; power of the tenant to sub-let for the purpose, with the consent of the landlord, *Bailey* 2714–2720——Limited operation of Section 19 (Act of 1881) as regards labourers' cottages in Ulster as compared with Munster, *ib.* 2721–2737.

Discontinuance by the Land Commission since the Labourers Act of the former practice of looking into the condition of the labourers, *Bayly* 3745——Allowance made to the landlord for rent where he has been ordered to build a new cottage, *ib.* 3746–3750.

Sufficiency of the present legislation in regard to labourers' cottages on holdings, *Greer* 8258–8265——Information as to the orders given by the Court during the first two years of the administration of the Land Acts in respect of labourers' cottages; belief that the sanitary authority had power to enforce such orders, *ib.* 8270–8282.

Land Commission (*Central Department*):

Explanation respecting the control exercised by witness since March 1893 and previously by Mr. Wrench (as senior Commissioner), with regard to the arrangements for fixing fair rents, *Fitzgerald* 8-10. 428–440. 505-518——Summary of the procedure in the Land Commission for the fixing of fair rents from the time of service of the originating notice till the hearing, *ib.* 17–23——Arrangement as to the sittings of the Commissioners, Mr. Justice Bewley and witness always sitting in appeal cases, *ib.* 529–533.

Recommendation that the duty of the Land Commission should be more confined to the fixing of a fair rent, and that questions of title, status, administration, &c., should be excluded from the consideration of the Commissioners, *Cunningham* 4579–4581. 4892–4894.

Explanation that when once a case is delegated to a Sub-Commission presided over by a competent legal gentleman, the Land Commission has absolutely no jurisdiction over that case until it comes before them on a re-hearing, *Bewley* 10230–10234—— Impossibility of the Land Commission giving any instructions to the legal Sub-Commissioners in law, and to the lay Sub-Commissioners in matters of valuation, on points that had not arisen; agreement of witness with the opinion expressed by his predecessor on this subject, *ib.* 10234, 10235. 10296–10299.

Conclusion that the Land Commission have no right to instruct the Sub-Commissioners as to the principles of valuation; issue of printed instructions to them on the conduct of business, *ib.* 10687–10693 ——Opinion that if the Land Commission were declared to be a superior court, no greater force could be given to its orders, which already bind all parties concerned; explanation that none of its orders can be questioned except on the ground of no jurisdiction, *Bewley* 10761–10773.

Report, 1894—*continued.*

LAND COMMISSION (CENTRAL DEPARTMENT)—continued.

Costs and inconvenience greater to tenants in going to the Chief Commission than in going to the Sub-Commission, the former only sitting, as a rule, in one town in a county, while the latter hold their courts as near to the litigants as possible, *Bewley* 11070-11077. 11414–11419——Opinion that the Land Commission should not be called upon to give any instructions in valuation to lay Assistant Commissioners and Court valuers; impossibility of laying down any definite rules on questions of law, the only course being to decide each question as it arises, *ib.* 11201–11210.

Recommended inquiry next Session into the distribution of business amongst the various departments of the Land Commission; also into the working of the Land Judges' Court, *Rep.* xxiii.

See also *the Headings generally throughout the Index.*

LANDLORDS:

Question considered (in connection with applications for fair rents) as to notice being given to the tenant of all objections proposed to be raised by the landlord on points of law; difficulty in preventing objections being suddenly raised, *Bailey* 1715. 1805–1814. 1916–1919——Relative advantage and disadvantage of the landlord, on receipt of the originating notice, notifying the tenant as to any points of law intended to be raised, *ib.* 1715. 1805–1814. 1916–1919.

Legal objections sometimes raised on the part of landlords to the fixing of fair rents, whilst in many cases the landlord is very anxious to have the judicial rent settled, *Doyle* 2895–2897.

Opinion that the landlords are not affected injuriously or unfairly by the Land Acts, though they have doubtless suffered very much in reduction of rents, *Bayly* 4012–4014. 4018–4020——Conclusion that the Acts are entirely in favour of the landlords, and are injurious to the tenants in many respects, *ib.* 4126–4130.

Denial of statement that it is the rule on every estate of which witness is agent to insist on an increase of rent on the death of a tenant; when a tenant dies the opportunity is taken to revise the rent if it happens to be very low, *Garvey* 12022–12039. 12118–12125. 12144–12146——Disapproval of the policy of the Land Act of 1881, as it went too far in abolishing the landlords' rights, *ib.* 12782–12787.

Very limited extent, during the last three sittings of the Committee, to which any evidence has been received on behalf of the landlords, *Rep.* iii.

Recommendation that the landlord should be obliged by a rule of the Land Commission within a certain time after the service of the originating notice to fix a fair rent, to state all the grounds of his objection to such application, and that a similar rule should apply to hearings in the Appeal Court, *Rep.* xv.

Advantageous position of the landlord, not only in being able to purchase the tenant's interest at substantially less than the real market value, but in being able to re-sell at the end of the statutory term at the full market value, and to fix the future rent, *Rep.* xvi.

See also *ABATEMENTS OF RENT. AGREEMENTS AND VOLUNTARY ARRANGEMENTS. APPEALS AND RE-HEARINGS. BUILDINGS. COSTS. COUNTY COURTS. Ejectment. EXCLUSIONS, &c. FAIR RENTS. FEE FARM GRANTS. IMPROVEMENTS. Limited Owners. PRE-EMPTION RIGHT. STATUTORY TERM. SUB-COMMISSIONS. TENANT RIGHT AND OCCUPATION INTEREST. TURBARY.*

Leases Large reduction of rents in cases of long leases, many of which were made in prosperous years at high rents, *Fitzgerald* 502——Object of the short term leases occasionally made by the land judges, *Bailey* 2064. 2065.

Explanations on the subject of the disallowance of tenants' improvements made under lease which excluded such improvements; frequency of cases before the Act of 1881 in which the tenant regarded the terms of the lease as compensation for his improvements, *Bailey* 2393–2474——Concurrence in the view that under the terms of some leases there may be full compensation for improvements by tenants, *ib.* 2644.

Inability of any leaseholder to apply for a fair rent except under Section 21 of the Act of 1881; reference to the case of Rae *v.* Cooney, where the family of a leaseholder for life might at his death become tenants from year to year, *FitzGibbon* 3003-3006. 3012——Statement as to the anomalies and difficulties arising from the section of the Act of 1887 relating to leaseholders, *ib.* 3014–3017.

Explanations as to witness' decision in Mollan *v.* Keeran that the large fine paid should not be taken into consideration in fixing the rent; regret that the Rent Redemption Act has not placed long leaseholders and fee-farm grant holders in the same position as ordinary leaseholders, *Bewley* 10300 *et seq.*——Contention that if any alteration of the law be made under which long leaseholders and fee-farm grantees are to be brought within the Act, those men who are practically, although not legally, tenants, should also be included, *ib.* 10315–10323.

Execution

Report, 1894—*continued.*

Leases—continued.

Execution of only 133 judicial leases under the Act of 1881, *Rep.* iv——Conclusion of the Committee that there is no principle in the exclusion of certain leaseholders from the Acts, and that they should have the right of resorting to the Court, *ib.* xx.

See also *EXCLUSIONS, &c.* *FAIR RENTS.* *IMPROVEMENTS.* "*Leinster Leases.*"

Leconsfield Estate. Explanation that the practice of Lord Leconsfield in making improvements differed from that of most other Irish landlords, and was a very exceptional case, *O'Keeffe* 6846-6850.

Legal Questions. Opinion that the number of legal points that will arise at the end of the first statutory period will be comparatively few, as most of the legal questions at issue will have been finally decided, *Bewley* 10257-10265.

See also *APPEALS AND RE-HEARINGS.* *JUDGMENTS AND LEGAL DECISIONS.*

"*Leinster Leases.*" Instances of several cases of "Leinster leases" in which the whole of the tenants' improvements were disallowed in fixing the fair rent, because the tenants had contracted themselves out of the Act, *Doyle* 7551-7568.

Lime. Practice of the Commissioners to allow tenants a fair interest on the actual expense of putting lime and potash on the soil, but not for the vast advantage that results to the farm from the process; conclusion that improvements due to liming are practically permanent, *O'Keeffe* 6443-6461——Doubt as to the ordinary process of liming lasting for a generation, *Doyle* 7363-7365.

Limited Owners. Few applications before witness in cases where the landlord is tenant for life, these being excluded from the Land Act, *Bailey* 2127-2134——Admission as regards the case of Peyton *v.* Gilmartin that the tenant was successful in resisting a judicial rent fixed during the life of the life tenant, *ib.* 2214-2221.

Explanations with further reference to the extent of creation of new tenancies by the tenant for life or limited owner, these holdings becoming future tenancies on the death of the limited owner, *Bailey* 2268-2285. 2480-2482. 2489-2494. 2561-2568.——Question considered as to the opportunities for fraud in the making of new tenancies by the limited owner disregarding the interests of the remainder-man, as by taking a fine and fixing a low rent. *ib.* 2483-2492.

Reference to the power of a life tenant under the Settled Land Act to give a lease that might extend beyond his own life, *Shaw* 8898, 8899. 8902-8904. 9083, 9084——Evidence as to the position of a tenant under a limited owner, the interest of the former terminating on the eviction of the latter unless he redeems; explanation that if the sub-tenants restore the middleman they have a charge on his interest, *Bewley* 10380-10389. 10399 10404.

Injustice and gross anomaly of the present state of the law with regard to lettings by limited owners, *Rep.* xx.

M.

MacAfee, Thomas. (Analysis of his Evidence.)—Witness has been an assistant lay Commissioner since 1889, having acted both as Sub-Commissioner and as appeal valuer; has had practical experience of farming in County Antrim since he was twenty years of age, 5350-5361. 5439-5442.

Details as to the method pursued by witness in inspecting and valuing farms as an assistant Commissioner, 5362 *et seq.* 5510 *et seq.*——Evidence to the effect that when a tenant's improvement has added more than five per cent. to the letting value of the land the landlord gets the benefit of the increased value beyond the amount that repays the tenant the cost of producing it, 5370-5374. 5473-5497.

Statement that in fixing fair rents regard is had by the Commissioners to the prices of agricultural produce; professional value of witness' private experience of prices, 5375-5380. 5516, 5517——Decided opinion that it is necessary to inspect the particular holding in every case, when fixing fair rents, 5381-5384.

Number of cases in which tenants have made improvements but have not claimed for them; impossibility of allowing for improvements that have not been proved in Court, 5385-5397. 5457-5472——Particulars of cases in which the application for a rent to be fixed was dismissed on account of sub-letting, 5398-5410. 5442, 5443.

Statement that proximity and accommodation values are taken into account by the Commissioners in fixing fair rents, 5411-5414. 5450-5456, 5514——View of witness that gross produce is not a decisive factor in estimating a fair rent, the relation of gross produce to the rent varying in every case, 5415-5423.

Information respecting witness' farm, which consists of about 170 statute acres, the rent being 138*l.* and the working expenses 200*l.* per annum; gross produce last year not

Report, 1894—*continued.*

MacAfee, Thomas. (Analysis of his Evidence)—*continued.*

not quite 400*l.*; 5424–5449——Opinion that the presumption in favour of the tenant in regard to buildings and the reclamation of waste land should be allowed to go back any distance of time, 5498–5509.

Absolute necessity of a hearing before the legal Sub-Commission in a great many cases; certainty that the bulk of the tenants would not agree to the abolition of the Sub-Commission, 5518–5527——Desirability of shortening the fifteen years' term on account of the great fluctuation in prices; suggestion that it should be limited to ten years, 5528–5539.

[Second Examination.]—Evidence to the effect that county cess, which varies considerably in the various counties of Ireland, is always considered in fixing a fair rent, 5540–5544. 5715–5729——Information respecting the allowance for proximity to a town; explanation why there was no allowance for proximity to Caledon in the case of Sarah Allen *v.* Lord Caledon, 5545–5561. 5654–5656. 5856–5864.

Statement to the effect that in the cases of large reductions of rent on the Shaw Estate, the usual procedure was followed, and the rents fixed were considered to be the fair rents, 5562–5567. 5657, 5658. 5902 *et seq.*——Practice of the Sub-Commissioners not to take the Poor Law valuation into consideration further than as an element in fixing the fair rent; higher Poor Law valuation in Armagh than elsewhere, 5567–5574. 5847–5855.

Explanation that in the case of a reduction of one of Lord Dartrey's rents from 22*l.* 7*s.* 6*d.* to 12*l.* the question of sub-letting did not arise as there was no evidence of it before the Court, 5575 *et seq.*——Disapproval of the practice of sub-letting as a principle, 5582, 5583.

General practice of witness to capitalise the difference between fair rent and competition rent in order to arrive at the specified value, 5584–5590——Opinion that the right of pre-emption by the landlord at the specified value is rather a hardship upon the tenant; desirability of the Ulster custom, under which the tenant has the right of free sale, being extended to the rest of Ireland, 5591–5596. 5663–5672. 5736 *et seq.*

Ability of the landlords generally to prove the improvements they make, 5597–5605——Endeavour of witness, in cases of deterioration, to value the land as near as possible at what should have been its normal value, 5606–5608.

Certainty that in many cases there is very great hardship to the tenant on account of the necessity of legally proving improvements, 5607–5610. 5617 *et seq.*; 5659–5662——Witness is not aware of any cases in which landlords have recouped themselves by charges on turbary after they have had the rent reduced on the holding, 5611–5613.

Great variation in the amount of labour and expense incurred in the reclamation of bog lands in different districts, 5613–5616——Contention that the price paid for the tenant right of a holding in Ulster has nothing whatever to do with the fixing of a fair rent, 5624–5630.

Opinion that when fixing a fair rent or a specified value all the evidence that either the landlord or the tenant can fairly produce should be taken into consideration, 5631–5633——Reiteration of the statement that it is the practice in the case of tenant's improvements to give the landlord the whole of the increased value that accrues after the tenant's expenditure has been met; opinion that the tenant is entitled to the greater part of the increased value, 5634–5644. 5715–5729. 5758–5782. 5932–5948.

Practice of the Sub-Commissioners to allow the prices of farm produce to have their due influence when fixing fair rents, 5645–5648——Suggestion that in re-fixing rents after the close of the judicial term the landlord and tenant might be given the chance of settling the rent after inspection by two lay Commissioners, with an appeal to the present Sub-Commission Court, 5649–5653. 5700–5714. 5817–5825. 5949–5951.

Probability that in a great many cases the tenants between the Mourne Mountains and the coast have been charged rent on their improvements, 5673–5675——Belief that if the artificial boundary with regard to town parks were removed altogether a great deal of friction would be prevented, 5676–5680. 5835, 5836. 5885–5895.

Hardship caused to the tenants of agricultural holdings by their being excluded under the Act from having a fair rent fixed on account of their being demesne or pasture tenants, or of there being mills other than flax mills on their holdings; general effect of exclusions to create unrest in the minds of agriculturists, 5681–5692. 5837–5846——Statement with regard to the cases on Captain J. Harrison's estate (where the tenants came to the Court to get a fair rent fixed after having agreed to a reduced rent with the landlord), that the further reduced rents were fixed by the Sub-Commission after careful inspection of the holdings, 5693–5700.

Doubt as to there being any danger to the tenant in the process by which the holding is valued apart from the buildings on it and the letting value of the buildings, if they are the landlord's, added, 5729–5735——Desirability of the tenants being encouraged in every possible way to make improvements on their holdings, 5748 *et seq.*

Conclusion

MacAfee, Thomas. (Analysis of his Evidence)—*continued.*

Conclusion that both the landlord and tenant should be informed as to the way in which the fair rent fixed has been arrived at, particulars as to allowances and additions being given them, 5753–5757——Obligation of the tenants to prove all the improvements they claim, whether in Ulster or not; explanation that an Ulster custom tenant is not required to prove the erection of buildings, 5762–5775.

Decided opinion that any Act dealing with the land question should be made so clear as not to admit of any misinterpretation on the part of those who have to administer it, 5783–5803——Statement that the occupancy right is considered when fixing a fair rent, and that a competition rent is fixed in cases were the holding is in the possession of the landlord, 5788–5797. 5865–5884.

Doubt as to the advisability of giving the court power to protect the present tenant by dealing with arrears, as in Scotland; sympathy of witness, however, with a tenant who is doing his best to pay an impossible rent, 5805–5813——Approval of the suggestion that where the tenant has now any right to turbary, mountain grazing, commonage, or seaweed, the court should be authorised to deal with the right as appurtenant to the holding, 5814–5816.

Desirability of a rule of law that a present tenancy once created should not be destroyed except by the wilful act or default of the tenant himself; great injustice for a tenant to be deprived of his interest in his holding because a middleman is ejected, 5826–5831. 5911–5931——Opinion that a tenant should not be excluded from the Act because he sublets to labourers, but that the line should be drawn at any sub-letting that would give the sub-tenant a right to come into court to have a fair rent fixed, 5832–5834.

Evidence to the effect that in the case of fee-farm grants under the Rent Redemption Act the entire improvements of the tenant go to the landlord, 5896–5901.

MacAfee, Thomas. Letter from Mr. MacAfee to the Chairman of the Committee explanatory of his action in connection with a certain case in which the rent was largely reduced; deduction made in respect of tithe rent-charge, &c., *App.* 742.

M'Cormick v. *Loftus.* Reference to the recent case of M'Cormick *v.* Loftus; statement hereon that where the contract does not mention the purpose for which land may be used, consideration is given to extrinsic evidence and to the size and nature of the holding, *FitzGibbon* 3253.

McDonnell v. *Blake.* Decision in the case of McDonnell *v.* Blake adverted to as not being applicable as a universal rule, *FitzGibbon* 3489–3492.

Mairs v. *Leckie.* Explanations in connection with the case of Mairs *v.* Leckie, in which witness declined to put any rent upon the expenditure of the tenant on improvements and reduced the rent from 18*l.* to 11*l.*; reversal of this decision by Mr. Justice Bewley, the old rent having been revived, *Bailey* 1140–1168.

Manure. View of witness that manuring land should be regarded as an improvement rather than as an ordinary element of good husbandry, *O'Keeffe* 6635–6639——Non-recognition of the amount of manuring that a tenant may have done in fixing the rent; admission that this course is not encouraging to a tenant who applies costly manures and fundamentally alters the character of the soil, *Doyle* 7339–7362.——*See* also *Lime.*

Maps. Great importance of a map showing the boundaries of each holding, *Bailey* 696–702——Inconvenience formerly when the tenants had to provide maps of their holdings, the maps being now supplied by the Land Commission, *Bayly* 4149–4153——Statement that during the years 1881 to 1885 the Sub-Commissioners were obliged to make their valuations without the assistance of maps of the farms in question; impossibility of making a satisfactory valuation under such conditions, *Roberts* 7752, 7753.

Recommendation that authentic maps showing the holdings on which judicial rents have been fixed, with appropriate reference numbers, should be kept in bound volumes, arranged in counties, *Bewley* 10190, 10191.

See also *Boundaries.*

Markets and Towns, Proximity to. Reference to proximity to a good market as an item in considering the value; limited use made of the railways, *Bayly* 3573–3575. 3858——Statement that proximity and accommodation values are taken into account by the Assistant Commissioners in fixing fair rents, *MacAfee* 5411–5414. 5450–5456. 5514——Information respecting the allowance for proximity to a town; explanation why there was no allowance for proximity to Caledon in the case of Sarah Allen *v.* Lord Caledon, *ib.* 5545–5561. 5654–5656. 5856–5864.

Marriages. Absolute denial of the statement that witness has interfered with the marriages of the tenants and has increased the rent upon the marriage of a son or daughter who was likely to succeed to the farm, the only action taken being to refuse to recognise a son as a tenant during the life of the father, *Garvey* 12048–12054. 12144–12146.

Middlemen. Power of the middleman, in the event of his rent being larger than the aggregate of the rents he receives, to surrender under the provisions of the Act of 1887, *Bewley* 11127–11131.

Opinion as regards the words "circumstances of the case, holding, and district," in the 8th section of the Act of 1881, that evidence as to the rents derived by middlemen from their sub-tenants should only be received by the Sub-Commissioners for just what it is worth, *Garvey* 12218–12222.

Illustration of the hardship in cases of tenants holding under a middleman whose interest is determined by ejectment for non-payment of rent in consequence of his failure to pay the head rent, *Rep.* xx.

See also *FUTURE TENANTS. Limited Owners. SUB-LETTING.*

Mill Holdings. Condition under which exclusion from the provisions as to fair rents applies to mill farms, *Bailey* 1640, 1641—— Evidence relating to two mill cases, Boyle *v.* Foster and Murdoch *v.* Parkes; decision that the holdings were not agricultural in character, and therefore did not come within the provisions of the Land Act, *FitzGibbon* 3077–3082. 3158, 3159.

Very few instances of mill farms where the mill is confined to the purposes of the holding, *Bayly* 4169–4171——Hardships in mill holdings being ruled out of the Act as not being purely agricultural holdings, *ib.* 4452, 4453.

Instance of a holding near Abbeyleix being excluded from the Act in consequence of there being a ruined mill on it, *O'Keeffe* 6042, 6043——Examination in regard to mill holdings; expediency of fixing fair rents on such holdings, *Greer* 8087–8099.

Advisability of fixing fair rents on farms which were originally mill holdings, but on which mills have fallen into disuse, *Heard* 10000–10004——Approval of the question being left to the discretion of the Sub-Commissioners as to whether holdings with old and disused mills on them should be excluded from the benefits of the Act, *Garvey* 11921, 11922.

Moonan v. *Conyngham.* Particulars of the case of Moonan *v.* Conyngham, showing the difficulty of adjudging whether land is held residentially or not, *FitzGibbon* 3064, 3065.

Mortgages. Statement as to tenancies created by a mortgagor after the date of the mortgage not being binding on the mortgagee, *Bailey* 931–935——Evidence to the effect that rents are fixed on mortgaged holdings without any notice being given to the mortgagee, but that he is allowed to intervene at any time and, if necessary, to have the case re-heard; belief that no practical injustice is done to the mortgagee, *Bewley* 10972–10991.

N.

Neligan, John Chute. (Analysis of his Evidence.)—Witness is Recorder of Cork, and County Court judge of the East Riding of County Cork, having previously been County Court judge at Londonderry; has had a large experience of land cases since he has been on the Bench, 11420–11430. 11444, 11445.

Evidence to the effect that during the two years that witness has been County Court judge he received 207 originating notices to have fair rents fixed, fifty-two of which were transferred to the Land Commission; there were appeals in thirty-eight of the 155 cases heard, 11431–11439. 11698–11712——Details as to witness' procedure in adjudicating on land cases, his endeavour being to form an independent judgment as to value in each case and not to rely on the report of the court valuer, 11440–11458. 11535 *et seq.*; 11723–11745. 11760–11783. 11835–11845.

Belief that the County Court decisions would command more outside confidence if there were two valuers instead of one, 11448–11450. 11542, 11543——Desirability of the court valuers being made permanent officials, and the County Court put as much as possible on the same footing as a Sub-Commission, in order to make it a suitable court for the revision of rent, 11451–11453.

Decided opinion that the right of appeal from all courts of first instance should be preserved, 11451, 11455. 11625–11627——Statement that witness leaves his valuers perfectly free as to the method by which they arrive at their valuation, only directing them to make the valuation as minute as possible, 11456–11458. 11560 *et seq.*

Experience of witness that the tenants have no difficulty in regard to proving their improvements in his court; he is not aware of any case in which the tenant's word as to his improvements has been disputed, 11459—11466. 11547–11555. 11674–11680. 11746–11759. 11828–11834——Practice of witness to give the tenant full interest on his outlay for improvement, 11468–11471. 11544–11546. 11535 *et seq.*

Information as to the cases of town parks that have come before witness, showing why each was decided in favour of the tenant; approval of the operation of the Act being still strictly limited to agricultural or pastoral holdings, 11473–11477. 11685–11693——Explanation that in the only dairy farm case that witness had to deal with he did not fix a rent, as it was one of the exempted cases, 11478–11488.

Report, 1894—*continued.*

Neligan, John Chute. (Analysis of his Evidence)—*continued.*

Strong objection to sub-letting on the ground that it may create congested districts; opinion that the small lettings made by a farmer to his own labourers come within the "discretion" under the Act of 1887, and should not be considered as sub-letting, 11489–11496—— Approval of the suggestion that, if any alteration be made in the law as to sub-letting, power should be given to fix a fair rent between the sub-tenant and tenant, as well as between the tenant and the landlord, 11497–11501.

View of witness that the fact that costs are not given to the "successful party" is not a matter of complaint, the fixing of a fair rent not being a hostile lawsuit; belief that the tenants' costs in witness' court are very small, 11506–11510——Result of witness' experience that the question of costs does not operate in keeping tenants out of court, 11510–11518.

Belief as to the efficiency of the system of reporting the cases that are brought before the Land Commission; occasional report of the proceedings in witness' court by one of the younger legal gentlemen present, 11519–11526——Opinion that the statutory term of fifteen years should be shortened; recommendation that it should be ten years, 11527–11538. 11609–11623.

Belief that the records of money or material allowed to the tenants for improvements are very well kept on large estates, but not on small ones, 11547–11549. 11672–11676——Occurrence of cases in which allowances in the shape of remissions or temporary reductions of rent were given to the tenant as a compensation for improvements, 11550–11555.

Necessity of legislation in order to do away with the doubt and difficulty as to what will take place at the end of the statutory term, 11557–11559. 11624——Statement that the question of making an allowance to the tenant for occupation right, when fixing a fair rent, has never been raised before witness; contention that the County Court valuer does not take the occupation right into consideration in his valuation, 11572–11608. 11628–11634. 11797–11827.

Rough estimate that, in cases of increased letting value due to tenants' improvements, any balance that may remain, after an allowance of not less than 5 per cent. has been made to the tenant, is divided in the proportion of about three-fourths to the tenant and one-fourth to the landlord, 11635–11654. 11784–11801——Evidence to the effect that where a holding has been deteriorated by the tenant the fair rent has been fixed on the land as the valuer saw it; feeling, however, that a hardship is done to the landlord in such cases, 11655–11671.

Opinion that the necessity of fixing lower rents now than would have been fixed before 1886 is due to the fall in prices, 11681–11684——Information as to witness' tenants, those who went into court having got small reductions in rent; large abatements given by witness in bad times, 11713–11722.

Non-objection to a general rule of law that the presumption should be that improvements increasing the value of the holding are the tenant's, unless the landlord proves the contrary, 11746–11759——Contention that in valuing a farm it is better to value the land without the buildings and then add the buildings, if necessary, than to value the whole as a going concern and deduct the buildings when they belong to the tenant; certainty that the landlord does not get rent twice over for the buildings, 11760–11783.

New Tenancies. Information as to the practice in awarding a sum to a tenant who has purchased from another tenant, in respect of his right of occupancy and of having a fair rent fixed, *Bailey* 2523–2536——Large number of cases in which estates have been for a long time in settlement where the question of new tenancies may arise, *ib.* 2665–2668.

Absence of any case, before witness, of new tenancy created by an assignment or settlement, *Doyle* 2864–2866——Information as to the circumstances under which a new tenancy is created, excluding the tenant from the court, *Bewley* 10605–10615.

See also *Future Tenants.*

Non-contentious Cases. Suggestions for a modification of the procedure in small non-contentious cases, and for dispensing with the preliminary hearing, but not in the larger or contentious cases, *Bailey* 1295, 1296. 1650–1652——Opinion that in non-contentious cases an appeal on questions of value might be withheld, and that the valuation might be made by a single valuer, *ib.* 1297–1299. 1650, 1651——Concurrence with Mr. Bailey's proposals respecting future procedure in non-contentious cases, *Doyle* 2925–2934; *Greer* 8130, 8131. 8135.——*See* also *STATUTORY TERM.*

O.

Occupation Interest. See *TENANT RIGHT AND OCCUPATION INTEREST.*

O'Keeffe, Cornelius. (Analysis of his Evidence.)—Witness has been an Assistant Sub-Commissioner since 1881, being one of the original staff; has had great practical experience of farming, and farms 400 acres at present, 5952–5960. 6023–6025.

Report, 1894—*continued.*

O'Keeffe, Cornelius. (Analysis of his Evidence)—*continued.*

Doubt as to Lord Cairns' Committee having had any influence upon the minds of the Sub-Commissioners, who at that time, and subsequently, were fixing fair rents, 5961–5967—— Great variation in the relation that rent bears to the value of the gross produce; estimate as to what would be a fair proportion of the gross produce to give the landlord in the case of grazing, dairy, and tillage land, 5968–5976.

Evidence to the effect that the value of the land in Ireland is considerably less now that wheat has practically gone out of cultivation; slight increase in the value due to spade cultivation, 5977–5991—— Various reasons why tenants do not come into court to have fair rents fixed, such as a temporary abatement from the landlord, large improvements made by the tenant, arrears, &c., 5992–5998.

Decided opinion that as regards evidence of improvements the onus of proof ought to be thrown in all cases upon the landlord, 5999, 6000——View of witness that where sub-letting has the consent of the landlord or has not injuriously affected his interest, the tenant should not be prohibited from having a fair rent fixed, 6001–6008. 6034–6041.

Suggestion that it would be fair to both landlord and tenant to reduce the statutory term of fifteen years to seven years, 6009, 6010——Impossibility of establishing any automatic process of re-adjusting rents, 6011.

Probability that in some cases the judicial rent has been fixed higher than it would have been on account of the exorbitancy of the old rent, 6012–6022——Disagreement of witness with the statement that the system of fixing rents between 1881 and 1887 was loose and rapid; no doubt that the rents then fixed are now too high, owing to the fall in prices and the increased cost of labour, 6026–6033. 6049–6055.

Instance of a holding near Abbeyleix being excluded from the Act in consequence of there being a ruined mill on it, 6042, 6043——Desirability of abolishing the town park theory, provided that proximity and accommodation value be not lost sight of, 6044–6048.

[Second Examination.]—Belief that no usage corresponding to the Ulster custom exists in Leinster, Munster, and Connaught, 6056–6062——Original idea of the Sub-Commission that a fair specified value was twenty years' purchase of the difference between the fair rent and the competition rent; opinion that it is somewhat less now, being what a prudent tenant might fairly be expected to give for the holding, 6063 *et seq.*; 6317–6325. 6353–6363; 6495 *et seq.*

Effect of the landlord's right of pre-emption greatly to limit the amount that the tenant receives as the specified value; fairness of the suggestion to allow the tenant to sell for the best price he can get, 6100–6109——No doubt that those tenants who had their rents fixed between 1882 and 1887 by agreement out of court, and had them filed, are now paying about double the fair rent; urgent necessity of the retrospective operation of the shortened statutory term so as to allow of an immediate revision of these rents, 6110–6141. 6189–6193. 6265 *et seq.*; 6295, 6296. 6326–6333*. 6554–6574.

Belief that the receipt by the tenant of temporary abatements, not taking the form of agreement filed, does account for a large proportion of tenants not coming into court; also, that improvements often keep the tenant out of court, 6142 *et seq.*; 6258–6265. 6315, 6316. 6534–6537—— Decided opinion, in view of the fact that improvements are necessary, and are generally made by the tenant, that a more liberal provision should be made to the latter as to the letting value resulting from them; principle of witness to allow the tenant 5 per cent. on his outlay, 6160–6178. 6429 *et seq.*; 6462–6494. 6529–6533.

Difficulty of the tenants in proving their improvements due chiefly to the want of documentary evidence; belief that if the presumption of improvement were always in favour of the tenant the landlord could always protect his own interest, 6179–6188. 6310–6312. 6404–6428. 6538–6546——Opinion that in cases where the tenant is prevented from coming into court by fear of losing some right of turbary, grazing, commonage, or seaweed, the Sub-Commission Court should have the power, wherever such a right existed on the estate, of securing it as appurtenant to the holding, 6194, 6195. 6547–6554.

Concurrence of witness with the proposal that in future one or two Sub-Commissioners should, with the consent of the landlord and tenant, fix a fair rent, subject to an appeal to the Sub-Commission Court, which should be final, the appeal on questions of law being as at present, 6196–6201. 6295–9298——Information as to the way in which witness values a holding, the value of the tenant's occupation right not being calculated in the rent; statement hereon that when two lay Sub-Commissioners differ the matter is settled by the legal Assistant Commissioner, 6202–6229. 6247–6289. 6299 6309. 6333* *et seq.*; 6363–6381. 6488 *et seq.*

Reiteration of opinion that a fair rent should be allowed to be fixed in cases of sub-letting, or sub-division, that do not injuriously affect the interest of the landlord, 6230, 6231.

O'Keeffe, Cornelius. (Analysis of his Evidence)—*continued.*

6231. 6289–6291. 6311——Friction and discontent caused by the town park principle; non-objection to the Sub-Commissioners having power to deal with the agricultural part of non-agricultural holdings under the fair rent provisions, 6232–6237. 6292-6294. 6313, 6314.

View of witness that where land, or a considerable portion of it, has been used for agricultural or pastoral purposes it should be treated as an ordinary agricultural holding, whether called demesne land or not, 6238–6246——Opinion that the system of fair rents should be made, as far as possible, universal; unfairness of the law under which tillage farms have fair rents fixed and pasture farms are denied them, 6241–6246.

Desirability of protecting the continuance of a statutory term and its perpetuity against every legal incident, or chance, except the act or fault of the tenant himself, 6246——Statement that deteriorated farms are valued as if they were in a fair condition, in order that the tenant may not profit by any act of wilful deterioration; prejudicial effects of "burning," "liming," &c., on the soil, 6341-6347. 6382–6395. 6471–6487.

Evidence to the effect that landlords' improvements are included in the valuations for rent, and that landlords are only allowed for such buildings as are suitable to the holding in an agricultural sense, 6348 *et seq.*——Statement that at the present time the land under wheat is only a very small percentage of the whole acreage under cereals in Ireland, wheat having practically gone out of cultivation owing to the fa in price, 6396–6403.

Enumeration of the various legal Commissioners that witness has worked with, 6420–6428——Practice of the Commissioners to allow tenants a fair interest on the actual expense of putting lime and potash on the soil, but not for the vast advantage that results to the farm from the process; conclusion that improvements due to liming are practically permanent, 6443–6461.

View of witness that the economic rent is a fair rent; impossibility of calculating what relation the economic rent bears to the competitive or market rent, 6495–6528.

[Third Examination.]—Impossibility of laying down any general rule fixing definitively the proportion which the rent ought to bear to the gross produce, owing to the varying circumstances of each holding, 6575–6578——Probability that a farm that was very productive as a wheat-growing farm would also be extremely valuable as a dairy farm; opinion, however, that dairy farming is not a profitable occupation, 6579 *et seq.*

Extreme difficulty of getting, by any system of statistics, any good idea as to how the prices of dairy produce affect the farmer, 6592-6607——Doubt as to any tillage crops being remunerative at the present time; decline in the cultivation of cereals due to the increased cost of labour, 6607–6616. 6798–6814. 6851-6854.

Explanation that when witness stated that spade cultivation was a kind of reclamation he had in mind the "Lazy Bed" system and the mountainy farms in Leitrim, 6617-6627——Contention that tenants who have made improvements do often keep out of court, especially if the improvements are more than twenty years old, 6628–6635.

View of witness that manuring land should be regarded as an improvement rather than as an ordinary element of good husbandry, 6635–6639——Reiteration of previous statement that where deterioration of land was the deliberate act of the tenant, it was not allowed for in fixing the fair rent, 6639–6641. 6833-6835.

Contention that sub-letting should be allowed if it does not interfere seriously with the main value of the holding; recommendation that the sub tenant should be given the right to come into court against the tenant as the tenant does against the landlord, 6641-6667——Opinion that it would be fairer to both landlord and tenant if the statutory term were reduced from fifteen to seven years when there is not a steady and tolerably uniform system of prices, 6668–6673.

Further information as to the fluctuations in the prices of agricultural produce since the year 1852, there having been in the main a steady increase up to 1883, with the exception of the year 1879; statement that there was no reason in the years 1881 to 1884 to apprehend any violent change, 6674-6707——Desirability of the Sub-Commissioners receiving definite instructions from the Land Commission as to the method to be adopted in order to arrive at the specified or true value of a holding; difference of the results of the two separate systems of valuation, 6708–6714. 6855–6867.

Grounds for the opinion that the rents fixed by agreement out of court were abnormally high and would now be unfair; uselessness of comparison by averages and percentages of reductions made in and out of court, 6715 *et seq.*; 6797. 6868-6873——Reasons why many of the tenants would not risk incurring the displeasure of their landlords by coming into court if an amicable arrangement could be come to outside, 6726–6756. 6869-6872.

Report, 1894—*continued.*

O'Keeffe, Cornelius. (Analysis of his Evidence)—*continued.*

Further evidence in support of previous statement that the tenants experience great difficulty in proving their improvements; enumeration of the improvements that cannot readily be dealt with in court, 6757-6793. 6814-6825——Statement that if the rates and cess paid upon a farm are abnormally high they are taken into consideration, in the tenant's favour, in fixing the rent, 6793-6796.

Experience of witness that it is not the practice of the ordinary tenant farmer to sell his straw, 6825-6832——Contention that in re-fixing fair rents a re-hearing and re-inspection are always necessary, on account of the changes that may have taken place in the holdings, 6836-6845.

Explanation that the practice of Lord Leconsfield in making the improvements differed from that of most other Irish landlords and was a very exceptional case, 6846-6850.

O'Neill v. *Cooper.* Particulars of this case as stated by the Land Commission for the consideration of the Court of Appeal; credit given to the landlord by the Sub-Commission to the extent of 25*l.* a year for improvements made by the tenant, whilst the Land Commission Court took into consideration a fine paid by the lessee (O'Neill) to the landlord, *App.* 743.

Originating Notice. Concurrence in the view that the service of an originating notice upon the landlord should be made as easy as the service of an eviction notice upon a tenant; several obstacles at present in the way of the former process, *Bailey* 1717-1725——Non-objection to the rule as to service of an originating notice by means of a registered letter, *ib.* 1726.

Forms of particulars to be filled up in the originating notice of application, *App.* 655-660.

P.

PASTURE HOLDINGS:

1. *Exclusion of Holdings wholly or partly under Pasture from the Fair Rent Provisions of the Land Acts; several cases in the Courts.*
2. *Recommendations for the Removal or Modification of the existing Restrictions.*

1. *Exclusion of Holdings wholly or partly under Pasture from the Fair Rent Provisions of the Land Acts; several cases in the Courts:*

Information respecting exclusions from the fair rent provisions where the holding is partly agricultural and partly pastoral, *Bailey* 980-984——Exclusion of holdings, if let to be used mainly or wholly for purposes of pasture; distinction between holdings above and below 50*l.* valuation respectively, *ib.* 1025-1041——Different circumstances under which it has been held that pastoral holdings are outside the Land Acts, *ib.* 2107-2109——Power of a tenant residing on his holding, if the valuation be under 50*l.*, to cultivate it as pasture or otherwise without being excluded from the Act, even though the land be craggy; limited number of such farms in Clare County, *ib.* 2286-2290. 2346-2350.

Details of the numerous cases of dispute which have arisen as to whether land is held for an agricultural or pastoral purpose or as a residential holding; special reference to the case of Hunt *v.* Ryan, in which the decision of the lower court held good, owing to an equal division of opinion in the Court of Appeal, *Fitz Gibbon* 3041-3064. 3066-3068——Detailed evidence regarding the Act of 1881 in relation to pasture holdings; difficulties which have arisen as to the meaning of the word "mainly" as used in the phrase "mainly for the purpose of pasture," *ib.* 3239-3242.

Particulars of the important case of Westropp *v.* Ellicot, on the subject of pasture holdings, which came before the House of Lords; also, of the cases of Draught *v.* Stubber, Holmes *v.* Lander, O'Brien *v.* White, and Byrne *v.* Hill, *Fitz Gibbon* 3243-3253.

Great change in the system of agriculture in Ireland, tillage giving place to a great extent to pasture; probability that pasture holdings were excluded under the Act of 1881 because graziers are not an improving class of farmers, but migratory in their habits, *Bewley* 10373-10379. 10413.

List of cases which have been before the courts on the subject of the exclusion of pasture holdings, *App.* 667.

Paper explanatory of the exclusion of pasture holdings from the fair rent provisions, *App.* 682.

2. *Recommendations for the Removal or Modification of the existing Restrictions:*

Difficulty as to the precise limit of rent to be fixed in order that tenants of pasture holdings may have the benefits of the Acts, *Bailey* 2047-2052——Opinion that the system

Report, 1894—*continued.*

PASTURE HOLDINGS—continued.

2. *Recommendations for the Removal or Modification, &c.*—continued,

system of fair rents should be made as far as possible universal; unfairness of the law under which tillage farms have fair rents fixed and pasture farms are denied them, *O'Keeffe* 6241-6246.

Desirability of fair rents being fixed on pasture holdings, as well as upon tillage holdings, seeing that Ireland is now running largely into pasture, *Doyle* 7326–7330. 7628–7633——Reference to the tenants who generally hold grazing farms as men with good business ideas, *Roberts* 7684-7686.

Opinion that tenants holding lands that cannot be used for anything but pasture should have the right to have a fair rent fixed; recommendation that the two sub-sections of Section 58 should be left as they are, except that the limit in the first should be a valuation of 100*l.*, instead of 50*l.* a year, *Bewley* 10413–10416——Reiteration of recommendation that the limit in regard to fair rent on pasture farms might be made 100*l.* instead of 50*l.* valuation, *ib.* 10758. 11006–11011.

Inadvisability of making any alteration in the law relative to pasture cases where the tenants sublet at higher rates in comparison than they themselves pay, *Barnes* 12979-12982.

Review by the Committee of the varying decisions on the subject of pasture holdings, *Rep.* xviii, xix——Conclusion that tillage being now less profitable under the changed conditions of agriculture, it is natural and conformable to the policy of the Acts that the limit of exclusion in pasture holdings should be raised, *ib.* xix.

Recommendation that a limit of 200*l.* should be fixed, in substitution for that contained in Sub-section 3 of Section 58 of the Act of 1881, *Rep.* xix——Proposed retention of the provision requiring residence, *ib.*

No holdings should be excluded unless a written statement of letting had prohibited tillage or meadowing for sale, and the court had come to the conclusion that this prohibition was inserted *bonâ fide*, and not merely to effect an exclusion from the Land Acts, *Rep.* xix.

Recommendation that no holding be excluded from the Land Acts, on the ground that a part of it is not agricultural or pastoral in character, unless such part is, in the opinion of the Court, a substantial part of the holding, *Rep.* xix.

Poor Law Valuation. Practice of the Sub-Commissioners not to take the Poor Law valuation into consideration further than as an element in fixing the fair rent; higher Poor Law valuation in Armagh than elsewhere, *MacAfee* 5567–5574. 5847–5855.

Poor Rates. Payment by the tenant in the first instance of the poor rates upon the gross value, land and buildings added together, the landlord allowing the tenant half the amount paid, *Garvey* 12235-12244.—— *See* also *Rates and Taxes.*

Prairie Value of Land. Doubt as to the "prairie value" of land in Ireland being higher than its present value, *Roberts* 7726, 7727.

PRE-EMPTION RIGHT OF LANDLORD:

Explanations in connection with the pre-emption right of the landlord (outside Ulster) and his power to buy at the "true value" when a tenant wishes to sell; way in which the true value of the tenancy is arrived at in such cases, *Bailey* 1422-1446——Liability of the tenant to some loss through the landlord's right of pre-emption, *Doyle* 2917.

Advantage to the landlord to the prejudice of the tenant, under the pre-emption right of the former, whereby he can have the specified value put upon the holding when the judicial rent is fixed; deterrent effect thereby upon subsequent improvements by tenants, *Bayly* 3629-3631. 4021-4034——Explanation as regards the right of pre-emption that in fixing the fair rent witness does not take into consideration what the competition value would be, nor what family the tenant has to support, *ib.* 3807-3831.

Conclusion as to the prejudicial effect of the landlord's right of pre-emption upon the tenant, witness recommending that the fixing of the specified value should be abolished; legal right of the tenant to sell in the highest market, *Cunningham* 4735-4740. 5044–5059. 5107-5117.

Opinion that the right of pre-emption by the landlord at the specified value is rather a hardship upon the tenant; desirability of the Ulster custom, under which the tenant has the right of free sale, being extended to the rest of Ireland, *MacAfee* 5591-5596. 5663–5672. 5736 *et seq.*

Effect of the landlord's right of pre-emption greatly to limit the amount that the tenant receives as the specified value; fairness of the tenant being allowed to sell for the best price he can get, *O'Keeffe* 6100–6109.

Feeling of witness that the landlord's right of pre-emption at the specified value should be preserved; mistaken view of the law that when the landlord buys at the specified

PRE-EMPTION RIGHT OF LANDLORD —continued.

value the tenant loses the improvements he has made since the specified value was fixed, *Doyle* 6889-6903——Admission that the general effect of fixing the specified value below the competitive value is that if the landlord exercises his right of pre-emption and then re-lets, there is nothing to prevent him taking from the "present tenant" the difference between the specified and competitive value, *ib.* 7209–7238. 7596–7604.

Decided opinion that the landlord's right of pre-emption should be maintained; experience of witness that the determining element in fixing the specified value is the price at which land has been sold by auction in the neighbourhood, *Garvey* 11931–11939. 12445–12471. 12785–12789.

Effect of the provisions as to true and specified value that the landlord may exercise his right of pre-emption, and may buy at what may be ascertained by the court to be the true value, *Rep.* xv——Conclusion of the Committee, with reference to certain Returns, as to the much lower selling value of tenancies through the operation of the right of pre-emption, *ib.* xvi——Prejudicial effect of the right of pre-emption in checking tenants' improvements, *ib.* xvi, xvii.

Reference by the Committee to the consequences of the right of pre-emption as repugnant to equity and opposed to good policy, and as not according with the object of Parliament in enacting the free sale provisions of the Act of 1881, *Rep.* xvii.

See also *FREE SALE* *REDEMPTION OF RENT ACT.*

Present Tenants. Ability of a "present" tenant to have a fair rent fixed, although he may have had a number of sub-tenants before 1881, and have already applied and been dismissed, *Bewley* 10932-10940.——*See* also *Conroy* v. *Drogheda.*

PRICES:

Impossibility of fixing a fair rent suitable for all time in view of the immense depreciation that may take place in the value of cattle and other produce, *Bailey* 1678-1684——Scale of prices laid down in the Act of 1853, and in all the Valuation Acts; statement hereon as to the lower prices in Griffiths' schedule than are now returned, *ib.* 2056–2063——Grounds for the conclusion that a scale of prices would be very fallacious as one of the data in fixing fair rents, *ib.* 2502-2508. 2515.

Explanation that in witness' practice prices are taken into account, but only in a general way, *Bayly* 3558–3572. 3699-3703. 3839-3841——Rough average taken by witness over a period of seven or ten years as regards prices when fixing the fair rent; advantage on this score if the statutory term were reduced from fifteen to seven years, *ib.* 4401-4419.

Consideration given by witness to the subject of prices as one of the factors in arriving at the fair rent, *Cunningham* 4521-4523——No doubt that the rents fixed by the Land Commission between 1881 and 1887 are now too high, and will be subject to a serious reduction when they fall in; statement hereon that the fall in the prices of agricultural produce has been considered in fixing rents, especially since the year 1885, *ib.* 4596-4601. 4641-4662. 4708–4735. 4953-4969——Practical experience of witness that farming has not been a profitable employment of late; information as to his two holdings, which consist of about 150 acres in all, *ib.* 4633-4640——No doubt that the Commissioners, when fixing rents between 1881 and 1887, were influenced by the previous twenty-five years of steady improvement, and were not prepared for a drop in prices so soon as five years afterwards; distinct and progressive decline in prices since 1885, *ib.* 4996-5008. £254 *et seq.*; 5338-5343.

Statement that in fixing fair rents regard is had by the Commissioners to the prices of agricultural produce; professional value of witness' private experience of prices, *MacAfee* 5375–5380. 5516, 5517——Practice of the Sub-Commissioners to allow the prices of farm produce to have their due influence when fixing fair rents, *ib.* 5645-5648.

Information as to the fluctuations in the prices of agricultural produce since the year 1852, there having been, in the main, a steady increase up to 1883, with the exception of the year 1879; statement that there was no reason in the years 1881 to 1884 to apprehend any violent change, *O'Keeffe* 6674-6707——Examination regarding the fall in the prices of produce; the greatest falls have been in mutton, beef, pork, and corn, but the fall in butter has been infinitesimal, *Roberts* 7754–7764. 7809–7817. 7955, 7956.

Statement that prices enter into account in making a valuation; capability of witness to judge the question of prices by his experience on his five farms, *Heard* 9341-9349. 9561-9565. 9965-9968-10067-10070——Reference to the downward tendency of prices since 1879; opinion that this would have the effect of reducing rents fixed by the Land Commission from 1881 to 1884, *ib.* 9352–9362. 9459-9461——Opinion that the necessity of fixing lower rents now than would have been fixed before 1886 is directly due to the fall in prices, *Neligan* 11681–11684.

See also *FAIR RENTS.* *Produce.* *STATUTORY TERM.* *Wheat.*

Procedure

Report, 1894—*continued.*

Procedure (*Generally*). Conclusion as to the cumbrous and costly character of the machinery under the Land Acts, witness considering that the time has arrived for the substitution of a simpler and cheaper procedure, *Fitzgerald* 580–595.

See also *COUNTY COURTS. FAIR RENTS. LAND COMMISSION SUB-COMMISSION.*

Produce. Allowance by Irish valuers generally of a third of the value of the produce for the rent, one-fifth being the rule in England, *Bailey* 2579-2581——Doubt as to the tenant having the value of one-third of his gross produce to live upon after paying all out-goings; belief that he only has about a fifth or a sixth, *Cunningham* 4711-4735——Impossibility of laying down a fixed rule as to the proportion which the rent of a holding ought to bear to the gross produce, *ib.* 5330–5336.

View of witness that gross produce is not a decisive factor in estimating a fair rent, the relation of gross produce to the rent varying in every case, *MacAfee* 5415-5423.

Great variation in the relation that rent bears to the value of the gross produce; estimate as to what would be a fair proportion of the gross produce to give the landlord in the case of grazing, dairy, and tillage land, *O'Keeffe* 5968–5976——Impossibility of laying down any general rule fixing definitely the proportion which the rent ought to bear to the gross produce, owing to the varying circumstances of each holding, *ib.* 6575–6578.

Recommendation by the Committee that in future all valuations be so made and recorded as to show the estimated value of the gross produce of the holding, as well as the fair rent, *Rep.* viii.

See also *FAIR RENTS. Prices.*

Profits of Farming. Information respecting witness' farm which consists of about 170 statute acres, the rent being 138*l.*, and the working expenses 200*l.* per annum; gross produce last year not quite 400*l.*; *MacAfee* 5424-5449——Result of witness' experience that Irish farming is, on the whole, a profitable business at the present time; certainty, however, that the farmers have not been able to make money at the same rate since 1879 as they did before that year, *Garvey* 11852 *et seq.* 11996–12008. 12126–12138——Experience of witness that farming in Ireland pays, tillage being more profitable than grazing; belief that the small farmers are doing much better of late years than the large ones, *Barnes* 12856–12859.

Publicity. Conclusion that both landlord and tenant should be informed as to the way in which the fair rent fixed has been arrived at, particulars as to allowances and additions being given them, *MacAfee* 5753–5757.

Purchase Acts. Recommended inquiry in the next Session into the working and administration of the Purchase Acts, *Rep.* xxiii.

See also *FREE SALE. PRE-EMPTION RIGHT OF LANDLORD.*

Q.

Quinn.—(*Downshire Estate*). Information respecting the case of a tenant of the Marquis' of Downshire at Dundrum, named Quinn, in which case a fair rent was fixed by witness Commission; decree in ejectment subsequently given by Mr. Justice Holmes, the fair-rent order having been set aside, *Bailey* 2186–2197, 2537–2544. 2588-2611——Small acreage comprised in this holding: belief that there was no public-house on it, *ib.* 2598–2611.

Case of Quinn further adverted to in connection with the decree given by the County Court judge before the fair rent was fixed and upheld subsequently thereto by Mr. Justice Holmes, *Bailey* 2793–2808.

R.

Rack Rent. Definition of "rack rent" as the highest possible rent that can be obtained in the open market, the term having also been applied of late years to the rents of over-rented farms, *Garvey* 12347–12356.

Rates and Taxes. Careful consideration necessary on the part of each Sub-Commission as regards the incidence of taxation upon the landlord and occupier, respectively; reference more especially to the county cess, *Bailey* 717-728——Large number of holdings where the rates and taxes are paid by the landlords, *ib.* 2250-2255——Statement that if the rates and cess paid upon a farm are abnormally high they are taken into consideration in the tenant's favour in fixing the rent, *O'Keeffe* 6793–6796.

Re-appointment of Committee. Recommendation by the Committee that they be re-appointed in the next Session of Parliament for the purpose of inquiring into the working

Report, 1894—*continued.*

Re-appointment of Committee—continued.

working and administration of the Purchase Acts, the working of the Land Judges' Court, and the distribution of business amongst the various departments of the Land Commission, *Rep.* xxiii.

Reclamation of Waste Land:

Belief that there is no presumption in law in favour of the reclamation of waste lands being made by the tenant, *Bailey* 1227–1230——Explanation of the practice generally in dealing with reclamation of waste lands and in estimating the allowance to be made to the tenant under different circumstances, *ib.* 1868–1896——Evidence available as to the condition of land before reclamation, *ib.* 2587.

Summary of the course adopted in valuing reclamation improvements, *Bayly* 3606–3611. 3645–3653——Valuation of the land, before taking the improvements into account; full benefit given to the tenant, as for reclamation and thorough drainage, *ib.* 3735–3744——Variation in the allowance made for reclamations by tenants, according to the quality of the soil; non-adoption of percentage allowances, *ib.* 3778–3787.

Due consideration given by witness, when fixing a fair rent, to the value of the holding in its wild state, and, in the case of bog land, to the facilities for its drainage and improvement, *Cunningham* 4507–4509——Experience of witness that, in regard to the vast bulk of cases of reclamation and drainage in Ireland, a fair allowance to the tenant to recoup him for his improvements has usually practically exhausted the letting value of the improvements; unfairness of landlords' claims for any part of the improved letting value, *ib.* 4769–4778.

Probability that in a great many cases of reclamation the tenants between the Mourne Mountains and the coast have been charged rent on their improvements, *MacAfee* 5673–5675——Explanation respecting spade cultivation and reclamation with reference to the "Lazy Bed" system and the mountainy farms in Leitrim, *O'Keeffe* 6617–6627.

Information as to the method adopted by witness in valuing reclaimed land, by which property proved by the Ordnance maps to have been reclaimed as far back as forty-eight to fifty years is not credited to the tenant, *Heard* 9257–9262. 9315–9324. 9411–9436. 9519–9530. 9745–9760. 9853–9855.

Absence of difference, as regards presumption in favour of the tenant, between reclamation and any other improvement, *Bewley* 10595–10599——Evidence to the effect that improvements of the nature of reclamation, but made on land already in cultivation, are not, as a rule, treated as reclamation proper, *ib.* 10600–10604.

Conclusion of the Committee as to the expediency of the valuation setting out the allowance for reclamation and showing the interest allowed on outlay, and the apportionment of any remainder of the letting value due to the improvement, *Rep.* viii, ix.

See also *Bog Land.* *Drainage.* *Improvements.* *Stuart H. Villiers.*

Redemption of Rent Act:

Object of the Redemption of Rent Act of 1891 to allow persons holding under long leases to purchase their holdings or to have fair rents fixed; explanation of the procedure of the Land Commission in cases under this Act, *Fitzgerald* 252–256——Arrangements as to holdings being visited and reported upon by purchase inspectors or valuers (acting as Assistant Commissioners) in connection with purchases under the Act, *ib.* 300–307. 323, 324.

Consent of the landlord to sell in about one-fifth of the cases under the Redemption of Rent Act, *Fitzgerald* 503, 504.—— Larger interests represented by many of the long leases and fee-farm grant cases, in which notice has been given under the Act; number of such cases, *ib.* 637–639.

Statement of the hardships of the holders of perpetuity leases and fee-farm grants under the Rent Redemption Act, by which all the tenants' improvements are confiscated, *Greer* 8064–8078. 8086——Illustration of the above mentioned hardships in the case of McCrea *v.* Hamilton, decided on the authority of O'Hea *v.* Morrison, in which no allowance was made for the tenant's improvements nor for a fine of 1,560*l.* which he had paid; explanation of a difference of opinion between witness and his colleagues, Mr. Jephcott and Mr. Garland, on the subject of this fine, *ib.* 8078–8085. 8206–8210.——Further reference to the case of McCrea *v.* Hamilton; supposition that the tenant entered into the agreement with a view to furthering his own interest, *ib.* 8343–8346.

Option of the landlord under the Redemption of Rent Act either to have his rent redeemed or to go into Court to have a fair rent fixed; heavy costs involved in redemption, *Bewley* 10450–10463——Explanation as to the difference between fee-farm grants and long leaseholds under the Act, the landlord in case of eviction getting the land back free from claims for compensation in the one case, but not in the other, *ib.* 11047–11069.

Particulars

Report, 1894—*continued.*

REDEMPTION OF RENT ACT—continued.

Particulars to be filled up in the form of application for redemption of rent and for an advance, under the Land Purchase Acts, in order to carry out such redemption, *App.* 660–662.

Return showing for each Province and County the number of applications to fix fair rents which have been excluded from the provisions of the Redemption of Rent (Ireland) Act of 1891, *App.* 705–721.

Summary of reductions in cases in the County Courts; larger average than in the Land Commission Courts, *Rep.* iv, v.——Much smaller average reduction in cases of rents fixed by agreements than in yearly tenancies and leasehold tenancies, *ib.* v.——Large average reduction in arbitration cases as compared with cases fixed by agreement, *ib.*

See also *FEE-FARM GRANTS.*

Re-hearings. See APPEALS AND RE-HEARINGS.

Rents (*Generally*). Concurrence in the view that it is quite possible that a very large proportion of the tenants (some 250,000 in number) who have not applied to have fair rents fixed have abstained from doing so because they consider they are now holding at comparatively low rents, *Bailey* 2291. 2574, 2575.

Decided opinion that the effect of fixing the judicial rent is to make the landlords in the district concerned lower their rents in the cases in which they are not fixed in Court, *Cunningham* 4745, 4746. 4858–4867——Probability that in some cases the judicial rent has been fixed higher than it would have been on account of the exorbitancy of the old rent, *O'Keeffe* 6012–6022.

Belief that with the exception of old rack-rents, and those fixed by purchasers in the Landed Estates Court, rents have not been much reduced since 1870; *Greer* 8612–8622. 8827–8834. 8852–8854——Rarity of increases of rent on the estates that witness has had to deal with, *Barnes* 12999–13004.

See also *AGREEMENTS AND VOLUNTARY ARRANGEMENTS. FAIR RENTS.*

Reports of Judgments. See *JUDGMENTS, &c.*

Residential Holdings. Reference to two cases of residential holdings on which rents were fixed by witness; condition required as to their being used agriculturally, *Greer* 8862–8868.

Revision of Rents. Impossibility of establishing any automatic process of readjusting rents, *O'Keeffe* 6011 —— Conclusion that the re-valuation of an estate has never tended to reduce the rent, *Greer* 8711–8717.——*See* also *STATUTORY TERM.*

Roads. Credit given to the landlord for any increased value through the making of roads or railways, *Bailey* 2582, 2583—— Peculiarity of the arrangement by which a landlord gets increased rent for a farm in the vicinity of a county road although the roads are kept up by taxes paid by the tenant, *Greer* 8578–8592——Proximity of roads to a farm not taken into account in the valuation, though an allowance is made to the tenant where a farm is difficult of approach, *Heard* 9727–6737.

Robb v. *Downshire.* Reference to the case of John Robb against the trustees of the Marquis of Downshire, in which the buildings on the holding although improved by the tenant were taken into account in fixing the rent, because by law such improvements were unsuitable by reason of their high value, *Greer* 8518–8532. 8762–8782. 8855–8861.

Roberts, Thomas. (Analysis of his Evidence.)—Witness is a temporary Assistant Lay Commissioner, having been steadily employed in that capacity, or as Appeal Court valuer, since 1882; has had a large experience of tillage and grass farming, and has acted as sub-agent of several large estates for over twenty years, 7649-7658. 7700 *et seq.*

Opinion that if the rents fixed in the early years of the Land Commission came into Court now they would be reduced, owing to the fall in prices and the increased cost of labour, 7659-7662. 7687 7694. 7703–7709——Approval of the suggestion that the statutory term should be less than fifteen years, 7663-7665.

View of witness that a tenant ought not to be excluded from having a fair rent fixed because of a small sub-letting for labourers' cottages, 7666–7672——Experience of witness that the improvements made on holdings are often not worth their alleged cost, 7673-7679. 7710 *et seq.*

Evidence to the effect that, in the case of deterioration, the rent is fixed as if the land was in good condition, 7680-7683——Statement that the tenants who generally hold grazing farms are men with good business ideas, 7684-7686.

Definition of a competition rent as one which a solvent tenant would pay for the farm if it were in the market, 7695-7698——Opinion that where the rents have not

Report, 1894—*continued.*

Roberts, Thomas. (Analysis of his Evidence)—*continued.*

been fixed the parties should go into Court and get them fixed, but that there is no necessity to go into Court to get judicial rents revised or adjusted, 7699.

Explanation as the method by which witness arrives at the fair rent of a holding; statement that proved improvements are always protected in the rent, 7716–7738 —— Doubt as to the "prairie value" of land in Ireland being higher than its present value, 7726, 7727.

[Second Examination.]—Evidence showing that witness has acted as lay Assistant Commissioner with Mr. Kane, Mr. Edge, and Mr. Doyle, by each of whom he was given absolute power in regard to the improvements proved in Court, 7739–7742. 7850 —— Reference to the general practice of tenants and landlords in employing valuers; necessity for exercising an independent judgment, owing to such valuers being influenced by their clients, 7743–7751. 7957–7960. 7985–7991 ——Invariable practice of witness to allow tenants sufficient percentage to fully cover improvements made by them, 7751.

Belief that the rents fixed by the Land Commission soon after 1881 were higher than would now be fixed, owing to the fall in the price of produce and to the increased cost of production, 7752 ——Statement that during the years 1881 to 1885 the Sub-Commissioners were obliged to make their valuations without the assistance of maps of the farms in question; impossibility of making a satisfactory valuation under such conditions, 7752, 7753.

Examination regarding the fall in the prices of produce; statement that the greatest falls have been in mutton, beef, pork, and corn, but that the fall in butter has been infinitesimal, 7754–7764. 7809–7817. 7955, 7956 —— Opinion that the cost of labour has increased generally; reference to the use of agricultural machinery as a means of overcoming the difficulty of obtaining assistance in busy seasons, 7765–7787. 7804–7806. 7940–7944.

Expediency of abolishing, with certain limitations, the whole of the restrictions on sub-letting, 7791–7798. 7800–7803 —— Suggested reduction of the fifteen years statutory term to a period of ten years; belief that it would be beneficial, and would not tend to wilful deterioration of land on the part of the tenants, 7820–7828. 7952–7954.

Difficulty of fixing specified values of farms, owing to the scarcity of material on which to form a judgment, 7829–7831 —— Discussion as to the expediency of fixing specified values; contention that if a tenant wished to part with his tenancy it was the intention of the Legislature to give the landlord the right of resuming his land on certain conditions, 7832–7846. 7971–7976.

Statement that in the event of a difference of opinion between two Commissioners in regard to any holding the legal Sub-Commissioner intervenes with the view of bringing them into accord or of deciding between them, 7851–7853. 7855——Advisability of acquainting litigants with the data which led to the decision of the court, 7854–7857.

Net increase of 1,000*l.* in rent out of about 45,000 appeals; objection to the inclusion in the average of the numerous cases in which rents have been simply confirmed, 7858–7865 —— Suggestion that where the valuation of the Court valuer approaches to within 5 per cent. of the rents fixed by the Assistant Commissioners it is injudicious to make any difference, 7865–7867.

Practice, in cases of appeal, to defer to the decision of the Court below as to which improvements belong to the landlord and which to the tenant, 7868–7874 ——Importance of improvements in order to enable Ireland to compete agriculturally with other countries; statement that the improvements have so far been generally made by the tenants, 7875–7887. 7945–7947.

Evidence showing that where the value of the improvement is less than the cost the tenant is allowed the whole benefit, 7888–7895——Detailed examination as to the practice of witness in dealing with cases in which the improvements made by the tenant have increased the letting value of the land; the tenant is given the full benefit of his expenditure, 7896–7924.

Explanation of the method followed by witness in fixing a fair rent; opinion that it should be fixed at a lower amount than would be given by a solvent tenant, 7925–7939 ——Inability of witness to say whether the land occupied by "holders" is better cultivated than that held by tenants; belief that such is the general opinion, 7948–7951——Explanations and suggestions respecting the settlement or readjustment of rent at the end of the term of fifteen years without a further appeal to the Court, 7961–7970.

Opinion that a town is improved and property increased in value by the exclusion of town-parks from the Land Act, 7977, 7978. 7992–8001——Inexperience of witness in regard to fixed rents in Ulster, 7979–7984. 8002–8004——Belief that the tenant's claim to improvements is very often over-estimated, 7985–7988.

Rochfort,

Rochfort, William. (Analysis of his Evidence.)—Submission by witness of Returns showing the sums paid since the 1st January 1882 for the tenant rights of farms held under judicial rents on estates for which witness is agent in Cork, Tipperary, Limerick, and Dublin, 13018–13026.

S.

Sales. See *FREE SALE. PRE-EMPTION, &c. REDEMPTION OF RENT ACT.*

Scutch Mills. Question as to whether scutch mills come under the fair-rent provisions of the Land Act, *FitzGibbon* 3083–3086; *Cunningham* 4793–4801.

See also *Mill Holdings.*

Seaweed. Belief that in fixing a fair rent seaweed cannot be included without the landlord's consent; constant complaint of the poorer farmers on the Mourne coast of County Down that they can get no seaweed on account of one particular landlord often having the right to the foreshore all along the county, *Cunningham* 4828–4830.

Shaw Estate (Armagh). Statement to the effect that in the cases of large reductions of rent on the Shaw Estate, the usual procedure was followed, and the rents fixed were considered to be the fair rents, *MacAfee* 5562–5567. 5657, 5658. 5902 *et seq.*

Shaw, James Johnston. (Analysis of his Evidence.)—Is a County Court Judge in Kerry; prior to his appointment to this position in January 1892 was in practice as a barrister on the North Eastern Circuit, 8871–8874.

Obligation upon the County Court to accept the legality of the decisions of the Land Commission unless such decisions are over-ruled by the Court of Appeal, 8875, 8876——Evidence showing that the only means of ascertaining these decisions is by reading such cases as are given in the Law Reports, or by hearing a conversational account supported by good authority, 8877–8879——Statement that decisions on land cases form a very subordinate part of the work done by witness, 8879–8881——Belief that most of the important decisions of the Land Commission are reported either in the Law Reports or the "Irish Law Times"; tendency of the Law Reports to give irrelevant matter, 8882–8893.

Impossibility of annulling a fair rent fixed by the Land Commission provided that the relation of landlord and tenant exists between the parties appearing; opinion that the jurisdiction of the Court is rarely questioned, 8894–8897——Belief that the Land Commission Court has power to decide whether a tenancy is or is not a present tenancy, 8896. 8905–8907——Reference to the power of a life-tenant under the Settled Land Act to give a lease that might extend beyond his own life, 8898, 8899. 8902–8904. 9083, 9084.

Security of the statutory tenant provided he has not got his rent fixed against some one who is not the owner of the land, 8900–8902——Evidence showing that a considerable number of future tenancies have been created since the passing of the Act of 1881 by landlords reinstating their evicted tenants, 8908——Power of a landlord to reinstate as a present tenant an evicted tenant whose tenancy has expired, 8908–8916——Inability of witness to give any information as to the status of the future tenant other than that he has no power to have a fair rent fixed, 8917–8923.

Belief that the basis of the Land Act of 1881 was that the tenant was not in a position to contract freely, 8923–8927. 9197–9203——Opinion that the jurisdiction of the County Court is co-ordinate with that of the Sub-Commission, 8928, 8929——Incorporation of the Act of 1870 by the Act of 1881, it being necessary to observe the checks and limitations of the former Act in administering the latter, 8930–8936.

Evidence showing that no applications have been made in Kerry for fixing either a specified or a true value; opinion that the landlords allow their tenants to sell their tenancies for the best price they can get, and do not interfere unless the assignee is a notoriously bad character, 8937–8945. 9223–9230——Inability of Kerry landlords to buy tenancies owing to their straitened circumstances, 8946, 8947——Desirability of allowing a tenant the utmost freedom of sale provided the landlord has no objection to the assignee, 8948–8952.

Examination as to the varied quality of the land in Kerry, 8953–8955——Testimony from judicial experience that improvements in Kerry have chiefly been made by the tenants, 8956, 8957——Reference to the large quantity of reclaimed land in the county, 8958.

Conclusion that the number of cases of fair rent heard by witness during 1893 was due to the action of the tenants on the Kenmare Estate; evidence showing that although the rents of these tenants were all raised in 1878 they did not take advantage of the Land Act of 1881 to apply for a reduction, 8961, 8962——Improbability of the

Report, 1894—*continued.*

Shaw, James Johnston. (Analysis of his Evidence)—*continued.*

cost of an appeal keeping a Kerry man from the Court; belief that the fear of an ejectment owing to arrears is a more likely reason, 8963–8965.

Explanation in regard to the rights of turbary; objection to the proposal to always include the turbary as part and parcel of the holding on the ground that it is wrong to compel anyone to part with property even at a fair price, 8966-8972. 9153-9155—— Opinion that the fixing of a fair rent is only justified by the fact that the tenant is not in a position to contract freely with his landlord, 8973.

Detailed evidence showing the procedure employed in fixing a fair rent; explanation that every step in the case is duplicated by the Clerk of the Peace keeping one set of notices and orders, and forwarding copies to the Land Commission Court, 8974–8978—— Practice in the Court presided over by witness for the valuer to make his report before the hearing of a case; the report is the absolutely unfettered judgment of the valuer, and is rarely affected by subsequent evidence in Court, 8978–8986. 8991. 9085–9089. 9133, 9134. 9174–9178. 9181–9185.

Opinion as to the hardship of a judge having no option but to adopt the report of the Court valuer in regard to the amount of fair rent, and to sign as his judgment a decision of which he has no knowledge: contention that the County Court judge is placed in a more difficult position than the legal Sub-Commissioner, 8987–8990. 9032–9043—— Conviction that the administration of oaths does not affect the evidence, 8992–8994 —— Practice of the valuer in Kerry to assume that all improvements have been made by the tenant; statement that the landlord very rarely claims any improvements except an occasional question of drainage, 8995-9003. 9097-9100. 9135-9138.

Explanation of the method followed by the valuer in Kerry in fixing a fair rent; belief that the main principle considered is what a solvent tenant would be willing to pay from year to year, with a liberal allowance for tenants' improvements, 9004–9017. 9090–9092. 9139–9152. 9179, 9180. 9231–9233. 9243-9247——Reference to the number of cases withdrawn from the County Courts on the appeal of the landlord and transferred to the Land Commission, 9018–9022. 9052–9062. 9096.

Evidence showing that where agreements as to fixed rents had not been filled such cases were often brought before the Court, and larger reductions made than had been given under such agreements, 9023–9027. 9189-9191——Belief that rents are now fixed at a much lower rate than they were in the early years of the Land Act, 9027–9030.

Inadequacy of the arrangement by which the County Court is allowed to send one valuer only to fix a fair rent, whilst the Land Commission send two; probability of thi being the cause of the great number of cases on the Kenmare Estate being withdrawn from the County Court, 9030-9032. 9049. 9186. 9234-9242 ——Grounds for objecting to the payment of the Court valuer by fees, 9044-9048. 9060 ——Opinion that the power of the County Courts to fix rents should be abolished unless two permanent salaried Court valuers be appointed, 9053–9059.

Discussion as to the percentage of reduction in cases of rents mutually agreed upon as compared with those fixed in Court, 9061–9063. 9065–9069. 9192-9195——Capability of the Kerry peasants to thoroughly look after their own interests, 9064. 9187, 9188 —— General impression of witness that there has been a great fall in the value of Kerry cattle, 9070–9080.

Attention of witness called to a table of "exclusions;" statement that such cases have mostly been questions of conacre, 9101, 9102. 9111——Inadvisability of permitting unlimited sub-letting; belief that there are some instances in which the tenant might be allowed the benefit of the Act, 9193-9109. 9196——Question as to the position of a tenant under a limited owner whose tenancy was determined; reference to a case in County Armagh where eighty-seven tenancies were made future owing to the eviction of the middlemen, 9112-9132.

Discussion regarding town-parks; opinion that where land is occupied by a *bonâ fide* agricultural tenant it should not be deemed a town-park, and that the law should not interfere on behalf of people who use the land for the purpose of luxury, 9156–9167. 9204-9220 —— Explanation that the County Court valuers are selected by the Land Commission, and may be changed at the discretion of the judge, 9168–9173.

Shaw, J. J. Rejection by the Committee of motion that a letter from Judge Shaw, supplementing his evidence, should be put on the Notes, *Rep.* xxxiv.

Shrinkage. Explanation of the term "shrinkage;" opinion that it has increased litigation amongst tenants, *Fitz Gibbon* 3471. 3476.

Sittings of Committee. Decision of the Committee, 3rd July 1894, to sit three days a week, *Rep.* xxx.

Size of Holdings. Great variation in the size of holdings dealt with under the Acts, *Bailey* 1661–1664.

Small

Small Holdings. Very large number of holdings under one acre which would be excluded from the Act on a variety of grounds, *Bailey* 2292——Very high prices recently paid for small farms; difficulty in selling large farms due to the absence of capital, *Doyle* 6913–6915——Evidence showing that many of the occupiers of small holdings in the west of Ireland depend for their rent on the earnings of their children in service in England and Scotland, *Greer* 8675–8688.

Solicitors. Probable extent to which solicitors are employed by the tenants in filling up the originating notice, *Fitzgerald* 567–573.

Recommendation that, if the present system of fixing fair rents be continued, the cases should be heard in Court without either side employing solicitors, as a very large proportion of the cost of procedure goes in law expenses; right of appeal to be retained, *Garvey* 11961–11966. 12196–12217.

See also *COSTS.*

SPECIFIED VALUE AND TRUE VALUE:

1. *Present Practice in fixing the Specified Value and the True Value.*
2. *Suggestions for an Amended System.*

1. *Present Practice in fixing the Specified Value and the True Value:*

Statement as to there being no evidence before the Sub-Commissioners when fixing the specified value of the tenancy, except the evidence upon which the fair rent is fixed, *Bayly* 4278–4286——General practice of witness to capitalise the difference between fair rent and competition rent in order to arrive at the specified value, *MacAfee*, 5584–5590.

Explanation that the Sub-Commissioners fix the true or specified value of a holding at what they think a reasonable man, not urged by any very great necessity, would give for the tenant-right if sold to him by the occupying tenant, *Doyle* 7150 *et seq.* 7591–7604——Statement that the amount of the fair rent has a certain influence on the specified value, the latter often being a certain number of years' purchase of the farmer; variation of the number of years' purchase according to the circumstances of each holding, *ib.* 7199-7201. 7495–7500.

Difficulty of fixing specified values of farms owing to the scarcity of material on which to form a judgment, *Roberts* 7829–7831——Discussion as to the expediency of fixing specified values; contention that if a tenant wished to part with his tenancy it was the intention of the Legislature to give the landlord the right of resuming his land on certain conditions, *ib.* 7832–7846. 7941–7946——Belief that a fixed specified value is no protection to an incoming tenant, *Greer* 8196–8199.

Reference to two exceptional cases in which specified value was fixed at five and seven years' rent, respectively, on farms which had greatly deteriorated; in some cases twenty-two and even forty years' purchase are given, *Heard* 9470–9485. 9613–9637.

Practice of witness' Court to fix the true or specified value at what a solvent tenant could give for the holding with a view to making a reasonable profit out of it; no doubt that the value of the tenant's interest has greatly increased in the open market since 1881, *Bewley*, 10941–10951——Information as to the increase and reduction of the true value in several cases; non-objection to the annual report showing in future the true value and other particulars referred to in the Act of 1870; *ib.* 11091–11098——Inability of the Sub-Commissioners sometimes to fix the specified value of a farm, on account of the absence of any reliable evidence as to value, *ib.* 11166–11172.

Unwillingness of the Commissioners to give a specified value, unless they obtain very good evidence in regard to it; grounds for the opinion that there is no injustice to the tenant in fixing the specified value, *Barnes* 12635–12941.

Summary of the provisions of the Act of 1881 as regards a specified value for the tenancy being fixed by the landlord and tenant or, in case of dispute, by the Court, *Rep.* xv, xvi.

2. *Suggestions for an Amended System:*

Recommendation that the fixing of a specified value should be abolished, and that the value should be ascertained in the ordinary way by public sale; denial that there is any laxity in fixing either "specified" or "true" value, *Cunningham* 4735–4740. 5044–5049. 5107–5117——Desirability of the Sub-Commissioners receiving definite instructions from the Land Commission as to the method to be adopted in order to arrive at the specified or true value of a holding; difference of the results of the two separate systems of valuation, *O'Keeffe* 6708–6714. 6855–6867——Expediency of some rule being laid down for the guidance of the Sub-Commissioners in fixing the specified value, there being very often no data to go upon, *Doyle* 6904–6910.

Report, 1894—*continued.*

SPECIFIED VALUE AND TRUE VALUE—continued.

2. *Suggestions for an Amended System*—continued.

Examination as to the intention of the Legislature in regard to fixing a true value on a tenancy; opinion that the true value was intended to be fixed at the full competitive price, and that the tenant should not be compelled to take any price less than could be obtained in the market, *Greer* 8498–8517——Grounds for desiring the abolition of fixing specified value; the highest tenant rights exist on the best managed estates, *ib.* 8835–8846.

Desirability of there being some rules laid down by the Legislature as to what is true value; reasons for the conclusion that true value is not the competitive value, *Bewley* 10287–10290.

Recommended repeal of the provisions relating to true value and specified value, in order that the declaration of the Act of 1881, that every tenant may sell his tenancy for the best price that can be got for the same, may be rendered effectual, *Rep.* xvii.

See also *FAIR RENTS.* *VALUERS AND VALUATION.*

STATUTORY TERM:

1. *Suggestions for the Reduction of the present Statutory Term of Fifteen Years.*
2. *Exceptions taken to the proposed Reduction.*
3. *Legal operation of the Statutory Term and Legal Position of the Tenant at the end thereof.*
4. *Question of Revision and Re-adjustment of Rents on the expiration of the Term; Facilities suggested on this point.*
5. *Conclusions and Recommendations of the Committee.*

1. *Suggestions for the Reduction of the present Statutory Term of Fifteen Years:*

Decided opinion that the statutory period of fifteen years is too long; suggestion that it should be only seven years; *Cunningham* 4584–4595. 4648–4651——Advisability, in view of the present state of agriculture, of applying the reduction of the statutory term to the cases of those tenants who had their rents fixed up to 1885; *ib.* 4708–4734——Explanation that the chief reason why witness advocates that rents should only be fixed for seven instead of fifteen years is that in case of fluctuations there would be less risk of injury to either side, *ib.* 5320–5329.

Desirability of shortening the 15 years' term, on account of the great fluctuation in prices; suggestion that it should be limited to ten years, *MacAfee* 5528–5539——Concurrence in the proposal for reducing the statutory term to one of seven years, *O'Keeffe* 6009, 6010. 6668-6673; *Greer* 8045–8048. 8061-8063. 8157-8163. 8822-8826——Suggested reduction of the fifteen years' statutory term to a period of ten years; belief that it would be beneficial and would not tend to wilful deterioration of land on the part of the tenants, *Roberts* 7663-7665. 7820–7828. 7952-7954——Opinion that the statutory term of fifteen years should be shortened; recommendation that it be reduced to ten years, *Neligan* 11527-11538. 11609–11623.

2. *Exceptions taken to the proposed Reduction:*

Grounds for the opinion that the statutory term of fifteen years should not be shortened, *Doyle* 6921–6923——Adherence of witness to his view that, notwithstanding the fluctuations to which agriculture is subject in Ireland, it is not advisable to shorten the statutory term of fifteen years; opinion that if the term were shortened some tenants would purposely neglect their farms, in order to get a low rent fixed, *ib.* 7083 *et seq.*

Discussion of the question of shortening the statutory term of fifteen years; belief, however, that it would have a tendency to unsettle tenants, and might lead to neglect of their lands during the last years of their term, *Heard* 9371–9377. 9566–9577. 9591. 9707–9712. 10013, 10014. 10047–10058.

Inclination of witness to the opinion that the statutory period of fifteen years should not be disturbed unless there is a very great variation in prices from time to time; possibility that the shortening of the period might unsettle the tenants, *Bewley* 10390–10398.

3. *Legal operation of the Statutory Term and Legal Position of the Tenant at the end thereof:*

Misapprehension existing in regard to the fifteen years' term; explanation that it does not relate to tenancy, but is a term of years during which the rent cannot be altered, *FitzGibbon* 3427–3433——Desirability of protecting the continuance of a statutory term and its perpetuity against every legal incident or chance, except the act or fault of the tenant himself, *O'Keeffe* 6246.

Decided

STATUTORY TERM—continued.

3. *Legal operation of the Statutory Term, &c.*—continued.

Decided opinion that there is nothing in the Act of 1881, or in any Act, giving any increased tenure to a tenant from year to year, the statutory conditions existing only within the statutory term; necessity of obtaining a further statutory term at the end of every fifteen years if the tenant wishes to secure himself against a determination of the tenancy, *Bewley* 10160-10190.

Power of the landlord and tenant to enter into an agreement during the last year of a statutory term, which shall have the effect of creating a fresh statutory term, *Bewley* 10189, 10190——Conclusion that the statutory term is quite distinct from the occupation right, *ib.* 10710-10717.

View of witness that the fair rent fixed will go on even though the statutory period has come to an end; advisability, however, of explicitly providing that it shall do so, *Bewley* 10788-10790 —Opinion that the landlord, at the expiration of the statutory term, is estopped from denying the present tenancy; extension of this view to cases where no legal question or objection was raised by the court below, *ib.* 11362-11383.

Necessity of legislation in order to do away with the doubt and difficulty as to what will take place at the end of the statutory term, *Neligan* 11557-11559. 11624.

4. *Question of Revision and Re-adjustment of Rents on the Expiration of the Term; Facilities suggested on this Point:*

Suggestions for simplifying the procedure in non-contentious cases at the end of the statutory term, and for dispensing with a re-hearing in court; proposed modification also as regards valuation, *Bailey* 1295-1299. 1650-1652——Necessity of a re-hearing of contentious cases when the statutory term expires; liability of the tenant to points being raised which may exclude holdings on which fair rents have already been fixed, *ib.* 1897-1902——Opinion as to the necessity of some re-inspection of each holding after the expiration of the fifteen years' term, *ib.* 2514, 2515.

Concurrence with Mr. Bailey that in non-contentious cases, when the time arrives for refixing the rents, this might be done by one or two valuers without a hearing in court; necessity of a re-valuation in every case, *Doyle* 2925-2934; *Greer* 8130, 8131. 8135——Conclusion that a revision of rents after the fifteen years' term according to a scale of price would not work, and that an Assistant Commissioner or valuer should inspect each holding in order to re-determine the fair rent, *Bayly* 3898-3902——Opinion that at the end of the statutory term, in all non-contentious cases, there should be facilities for settlement through a single valuer as Sub-Commissioner, *ib.* 4438—4449.

Advisability of valuing each holding separately when re-fixing rents that have been in force for fifteen years; opinion that the prices that may have been given for the tenant-right should not be allowed to affect the valuation, *Cunningham* 5101-5106——Suggestion that, in refixing rents after the close of the judicial term, the landlord and tenant might be given the chance of settling the rent after inspection by two lay Commissioners, with an appeal to the present Sub-Commission Court, *MacAfee* 5649-5653. 5700-5714. 5817-5825. 5949-5951.

Contention that, in refixing fair rents, a re-hearing and re-inspection are always necessary, on account of the changes that may have taken place in the holdings, *O'Keeffe* 6836-6845——View of witness that it would be an advantage if the re-fixing of the rent at the end of the judicial term could be largely done without the intervention of the Commissioners, *Doyle* 6924-6929. 7618 *et seq.*

Question of the settlement or re-adjustment of rent at the end of the term of fifteen years without a further appeal to the Court; suggestion that two valuers should be sent to inspect the property, and in the event of their disagreement a lay valuer should be appointed by the Land Commission, and that the decision arrived at should be final, unless any point of law were raised, *Roberts* 7961-7970.

Opinion that it would be disastrous to both landlords and tenants if the re-fixing of fair rents at the end of the first statutory term should be settled by litigation; recommendation that the Land Commission should have the power to send a valuer to settle the rent conditionally, both sides having the right of appeal to a Sub-Commission, *Bewley* 10247-10257. 10273-10284——Impression that, if witness' suggestion as to the mode of fixing the fair rent at the end of the statutory period were adopted, the rent so fixed would be accepted in a vast number of cases; advantage, however, of retaining the right of appeal, *ib.* 10418-10422. 10490-10492. 10510.

Reiteration of opinion that there are no means of re-fixing the rents at the end of the statutory period by a scale of prices; further details as to witness' suggestion in regard to re-fixing rents, the main object of which is to save enormous expense both to landlords and tenants, *Bewley* 11173-11189.

Personal view of witness that on the expiration of the statutory term the rents should be regulated according to the price of agricultural produce, the revision to take place

Report, 1894—*continued.*

STATUTORY TERM—continued.

4. *Question of Revision and Re-adjustment of Rents, &c.*—continued.

every seven years, if desired by the landlord or tenant, and to be automatic; details of a scheme by which this could be accomplished, *Garvey* 11944–11960. 11987–11995. 12195 *et seq.*——Contention that the difficulties of working witness' scheme for the automatic revision of rents at the end of the statutory period, according to the rise and fall in prices, are not insuperable; reasons for disapproving of any shortening of the statutory term if the scheme cannot be carried out, *ib.* 12368–12385. 12540–12554. 12693–12705. 12749–12756. 12819–12832.

Possibility of a sliding scale being worked out so that rents can be fixed according to prices at the end of the statutory term, there being a right of appeal as to value; reliability of the scale of prices published by the Land Commission from time to time, *Barnes* 12986–12998.

5. *Conclusions and Recommendations of the Committee:*

Quotation of the opinions, respectively, of Lord Justice FitzGibbon and Mr. Justice Bewley as to the legal position of the tenant in regard to rent at the end of the statutory term; want of coincidence between the two opinions, *Rep.* xxi.

Conclusion that it should be made clear by legislative enactment that at the end of the statutory term the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until a new rent shall have been fixed in accordance with the law, and the statutory conditions thereby revived, *Rep.* xxi.

Expediency of some provision for the prevention of needless litigation, doubts having been expressed whether the legal status of a judicial tenant can be questioned on the application for a second statutory term, *Rep.* xxi.

General consensus of opinion among the witnesses that the term of fifteen years is too long; view of the Committee that the term should not exceed ten years, *Rep.* xxi, xxii.

Stock (*Cattle*). Gradual deterioration in the quality of cattle since 1879, causing a fall of about 15 per cent on prices, *Barnes* 12965–12970——Great decline in the quality of store stock in witness' neighbourhood of late years; endeavour of the stock breeders to remedy this end as much as possible, *Garvey* 11872–11875. 12008. 12191–12194.

Straw. Experience of witness that it is not the practice of the ordinary tenant farmer to sell his straw, *O'Keeffe* 6825–6832.

Strawberries. Correction of statement that the cultivation of strawberries is not agricultural, *FitzGibbon* 3157.

Stuart, H. Villiers. Reference to some rents on the estate of Mr. Villiers Stuart in Waterford which were orginally 6*d.* and were gradually raised; increase to 4*l.* eventually, through the decision in the case of Adams *v.* Dunseath, *Bailey* 1859–1867. 1951–1965.

Explanation as to the principle on which the case of Patrick Moore, on the estate of Mr. Villiers Stuart, was decided; whatever the value of the reclamation may have been, it was considered to have been satisfied by the tenant's enjoyment of the holding for fifty years at a rent of 6*d.* a year, *Bewley* 10564–10594. 10615–10619——Contention that the case of Moore is quite different from that of Adams *v.* Dunseath, coming under the last clause of Section H. of the Act; explanation that the Court held that improvements made by the tenant before the granting of the lease passed to the landlord, *ib.* 11251 *et seq.*

Further information respecting Moore's case, showing that the tenant was very ill-advised in serving an originating notice, the result being that his rent was raised from 18*s.* 9*d.* to 30*s.*; non-inclusion of the improvements in the valuation in this case, *Bewley* 11272–11334. 11414–11419.

Notes of evidence in the proceedings before the Land Commission Court at Waterford on 26th April 1894, as between Patrick Moore and John Morrissey (tenants) and H. V. Stuart (landlord), *App.* 699–701——Judgment in the foregoing case, Mr. Justice Bewley and Mr. Commissioner Fitzgerald dissenting from Mr. Commissioner O'Brien, *ib.* 701, 702.

Report, 1894—*continued.*

SUB-COMMISSIONS:

1. *Constitution and Jurisdiction of the several Sub-Commissions.*
2. *Procedure.*
3. *Local Sittings: Removals from one District to another.*
4. *Question of Amendment on certain Points.*

1. *Constitution and Jurisdiction of the several Sub-Commissions:*

Delegation of the fair-rent cases to a Sub-Commission, this at present comprising a legal chairman and three pairs of lay or Agricultural Commissioners with a Deputy Registrar; past changes in the constitution of each Sub-Commission, *Fitzgerald* 29-33.

Delegation of all the powers of the central Land Commission to each Sub-Commission, sitting locally, the orders of the latter being final, subject to appeal, *Bailey* 657, 658. 729-735—— Belief as to the legal Sub-Commissioners having all had substantial practice, *ib.* 1320, 1321—— Qualifications of the several lay Sub-Commissioners as regards practical acquaintance with land and its value, *ib.* 1322-1336—— Practice as to the chairman, though probably not conversant with agriculture, and though he has not inspected the holding, deciding between the two lay Sub-Commissioners when they cannot agree as to the rent to be fixed, *ib.* 1354-1372. 1567-1571.

Practical settlement of fair rents by each individual Sub-Commission, the legal Commissioner deciding when there is any difference between the other two Assistant Commissioners, *Bayly* 4462-4476——Doubt as to Lord Cairn's Committee having had any influence upon the minds of the Sub-Commissioners who at that time and subsequently were fixing fair rents, *O'Keeffe* 5961-5967.

Particulars as to the appointment, tenure of office, and removal of the legal and lay Sub-Commissioners, their appointment and removal resting with the Executive; interchangeability of the Sub-Commissioners in regard to the various duties, *Bewley* 10675-10686.

Forms of delegation of powers by the Land Commission to the Assistant Commissioner, *App.* 662, 663.

Return showing the number and strength of the Sub-Commissions from time to time since the passing of the Act of 1881; *App.* 677.

2. *Procedure:*

Practice as to the legal chairman of each Sub-Commission sitting alternately with each pair of the lay Assistant Commissioners; limited extent to which the latter sit without the former, *Fitzgerald* 34, 35 —— Hearing of cases according to their priority on the lists, about three weeks' notice being given to the parties, *ib.* 36-44——Evidence taken on oath, the parties appearing by solicitors or counsel, *ib.* 45, 46——Facility in obtaining copy of the Assistant Commissioners' reports; also, a tracing of the map of the holding, *ib.* 78, 79. 84-86——Announcement of the decisions of the Sub-Commission in open court, *ib.* 93.

Explanations respecting the procedure of the lay Sub-Commissioners when they sit in pairs, without a legal chairman; determination by them of the value and the rent, after inspection of the land, questions of law being reserved for the chairman, *Bailey* 1337-1353. 1567-1571—— Rule of the lay Sub-Commissioners to take the law from the chairman, though they sometimes dissent from him, *ib.* 1347-1353.

Very rare instances of inspection of a holding by only one Sub-Commissioner, *Bailey* 2511-2513—— Difference occasionally between the lay Sub-Commissioners, but not as a rule, *ib.* 2510—— Considerations as to the inoperativeness of the 9th section of the Act of 1881 with respect to the Commission taking into account unreasonable conduct of either landlord or tenant, *ib.* 2824-2831.

Similar practice of witness' Sub-Commission as of that presided over by Mr. Bailey, *Doyle* 2851——Completion of the work by witness and his colleague, when their inspection is finished, during a day in office, the data being then got ready for submission to the legal Sub-Commissioner, *Bayly* 3555——Unanimity generally of the Sub-Commissioners in their decisions; unsatisfactory disagreement in some cases, *ib.* 4198-4205—— Action of the lay Sub-Commissioners according to their own discretion, there being no fixed rules for their guidance, but reference being made to the legal Sub-Commissioner on points of law, *ib.* 4206-4209. 4212, 4213.

Practice of the lay Sub-Commissioners to take their view of the law from the legal Sub-Commissioners, *Doyle* 7239-7241——Statement that in the event of a difference of opinion between two Commissioners in regard to any holding the legal Sub-Commissioner intervenes with the view of bringing them into accord or of deciding between them, *Roberts* 7851-7853. 7855.

Report, 1894—*continued.*

SUB-COMMISSIONS—continued.

2. *Procedure*—continued.

Infrequency of cases of disagreement between witness and his colleagues; power of a Commissioner to report his dissent on the Minute, *Greer* 8446-8453 —— Reference to the increased facility with which cases are now conducted by the Sub-Commission Courts, *Heard* 10015–10018.

Comment by the Committee upon the different practice of different Assistant Commissioners as regards the allowance made for tenants' improvements and for occupation interest; absence nevertheless of any appeal on the subject, *Rep.* viii.

3. *Local Sittings; Removals from one District to another:*

Steps taken to sit in places as near as possible to the holdings of the parties, *Bailey* 1286-1288—— Very limited extent to which there has been any dissent between witness and his Sub-Commissioners; statement hereon upon the question of Colonel Bailey having been shifted in consequence from one Commission to another, *ib.* 1703-1714.

Inquiry as to the removal of Sub-Commissioner from one district to another; it is very exceptional for a Commissioner to be removed when half through an estate, *Greer* 8402–8413——Advisability of establishing a rota to prevent the arbitrary removal of lay Commissioners, *ib.* 8414. 8419——Expediency of confining Commissioners to their own districts, *ib.* 8414-8418—— Reference to the power of a judicial Commissioner to remove legal Sub-Commissioners from district to district, *ib.* 8420–8427.

Advantage of the lay Assistant Commissioners being sent to different parts of Ireland and mixing more together, thus securing greater uniformity in the principles of valuation, *Bewley* 11081–11087. 11361. 11412, 11413.

Forms of notices as to the sittings of the Sub-Commissions, *App.* 663–665.

4. *Question of Amendment on certain Points:*

Opinion that in the majority of cases public hearing in Court is not necessary, *Fitzgerald* 585—— Approval of some general principles being laid down for the guidance of the Sub-Commissioners, but not any detailed instructions, *Bailey* 2509——Expediency of the Sub-Commission Court being the final Court as regards value and fact, exclusive of law points, *Bayly* 4176-4180.

Strong inclination of witness to let the decisions of the Sub-Commission be final on questions of value, the average alteration made through the process of appeals, which is costly, having only been 2, *Cunningham* 4582, 4583. 4847-4855——Absolute necessity of a hearing before the legal Sub-Commission in a great many cases; certainty that the bulk of the tenants would not agree to the abolition of the Sub-Commission, *MacAfee* 5518-5527.

Concurrence of witness with the proposal that in future one or two Sub-Commissioners should, with the consent of the landlord and tenant, fix a fair rent, subject to an appeal to the Sub-Commission Court, which should be final, the appeal on questions of law being as at present, *O'Keeffe* 6196–6201. 6295–6298—— Practicability of making the decision of the Sub-Commision Court final in the case of an appeal respecting a fixed rent, *Heard* 9713-9716——Strong objection to a proposal to subpœna the Sub-Commissioners with a view to having them examined in Court as to the grounds upon which they arrived at an estimate of a judicial rent, *Bewley* 11197, 11198.

See also *APPEALS AND RE-HEARINGS. COUNTY COURTS*, 2. *Delay. EXCLUSIONS, &c. FAIR RENTS. IMPROVEMENTS. Inspection of Holdings. JUDGMENTS AND LEGAL DECISIONS. PRICES. SPECIFIED VALUE AND TRUE VALUE. STATUTORY TERM. TENANT RIGHT AND OCCUPATION INTEREST. TOWN PARKS. TURBARY. VALUERS AND VALUATION.*

Sub-Division of Holdings. Explanation that where several people divide a holding between them and arrange it so as not to alter the estate they are considered to be in *bonâ fide* occupation and are termed a "conjunct" lessee, *FitzGibbon* 3470, 3471.

Example of a case of great hardship in sub-division; belief that there is not so much risk of harm in sub-division as was formerly the case, but less than ten acres is not advisable and would be insufficient in the West of Ireland, *Greer* 8022–8030. 8167–8173. 8283-8316. 8654-8664——Advisability of leaving cases of sub-division where the interest of the landlord would not be prejudiced to the discretion of the Sub-Commission, *ib.* 8665-8672. 8728–8739.

Inadvisability of making any alteration with regard to the conditions as to sub-division; disapproval of sub-division among the members of a family, especially when there is not enough capital, *Bewley* 10295. 11199, 11200.

Report, 1894—*continued.*

SUB-LETTING:

1. *Statutory Provisions and Restrictions with regard to Exclusion from the Fair Rent Clauses of the Land Acts; extent of such Exclusion.*
2. *Question of Removal or Modification of Restrictions and of the adoption of various Amendments.*
3. *Conclusions of the Committee.*

1. *Statutory Provisions and Restrictions with regard to Exclusion from the Fair Rent Clauses of the Land Acts; extent of such Exclusion:*

Information with regard to the case of Mr. Kennedy (near Ballymena), in which were involved several sub-lettings; fair rent fixed by witness, though this decision was overruled on the ground of non-triviality, *Bailey* 1169–1186. 1305–1319——Exclusion doubtless of a large number of cases of sub-letting, on the question of triviality, *ib.* 1233–1236——Causes of the more numerous sub-letting exclusions in Ulster than elsewhere, *ib.* 1857, 1858.

Belief that in no case before witness has the question been raised of sub-letting for the use of labourers on the holding, *Doyle* 2859–2863 —— Doubt as to the tenant being in much danger of exclusion from the Act on account of trivial exceptions taken by the landlord; witness is not aware of any case having been dismissed because of a quarry or a brickfield on the holding, *ib.* 7286-7297. 7605–7617. 7634–7639.

Information respecting Section 15 of the Act of 1881 which deals with cases of sub-tenancies; decision in the cases of Seymour *v.* Quirke and West *v.* Huggard where, after the death of the middle landlord, the year-to-year tenancy granted by him to the sub-tenant was to be continued under the head landlord, *FitzGibbon* 3007–3010 —— Further reference to the difficulty caused by the Act of 1881 in regard to sub-letting and to its purported amendment by the Act of 1887; uselessness of suggesting any improvement so long as middlemen continue, *ib.* 3018–3025.

Information as to the complications arising from the various Acts relating to sub-letting; instances in the cases of Bolton *v.* Keatinge, Mulcaire *v.* Joynt, and Bryan *v.* Briggs, all of which were decided in favour of the tenants, *FitzGibbon* 3260–3266. 3283–3285—— Opinion that the case of Kennedy *v.* Essex was decided on the question of consent and not on that of triviality, *ib.* 3267–3276. 3286-3287—— Great importance of the recent decisions in two cases of triviality, viz., White *v.* White and Cortallis *v.* Ward, as laying down new principles of interpretation of the Act of 1887; conclusion that the word "trivial" is open to objection, *ib.* 3277–3282. 3288–3298.

Opinion that sub-letting is the principal cause of tenants being ruled out of the Land Court, *Bayly* 4450, 4451——Reference to sub-letting and sub-division as the chief causes of exclusion from the Land Act, *Cunningham* 4607–4621——Particulars of cases in which the application for a rent to be fixed was dismissed on account of sub-letting, *MacAfee* 5398–5410. 5442, 5443 —— Disapproval of the practice of sub-letting as a principle, *ib.* 5582, 5583.

Evidence showing that by the Act of 1881, where a tenant sub-lets to cottier tenants, as is frequenty the case in Ulster, he is excluded from the Act; opinion that this sub-letting should not exclude him, *Greer* 8100–8106——Belief that in many instances landlords have raised no objection to sub-letting until the tenant has applied for a fair rent, *ib.* 8689–8691.

Statement to the effect that as the law now stands the fact that a landlord has taken rent for years without objecting to sub-letting does not amount to consent on his part to the sub letting, *Bewley* 10324–10327——Particulars of the case of Kennedy *v.* Essex, which had an important influence on witness' judgments in regard to sub-letting; absence of any hard-and-fast line as to sub-letting, what might be trivial in one case not being trivial in another, *ib.* 10328–10434.

List of cases which have been before the courts, *App.* 667——Paper explanatory of exclusions from the Act in the case of sub-lettings, *ib.* 683.

2. *Question of Removal or Modification of Restrictions and of the adoption of various Amendments:*

Opinion that a tenant should not be excluded from the Act because he sub-lets to labourers, but that the line should be drawn at any sub-letting that would give the sub-tenant a right to come into court to have a fair rent fixed, *MacAfee* 5832–5834——View of witness that where sub-letting has the consent of the landlord or has not injuriously affected his interest, the tenant should not be prohibited from having a fair rent fixed, *O'Keeffe* 6001–6008. 6034–6041. 6230, 6231. 6289-6291. 6311——Further contention that sub-letting should be allowed if it does not interfere seriously with the main value of the holding; recommendation that the sub-tenant should be given the right to come into court against the tenant as the tenant does against the landlord, *ib.* 6641–6667.

Report, 1894 – *continued.*

SUB-LETTING—continued.

2. *Question of Removal or Modifications of Restrictions, &c.*—continued.

Hardship upon the tenant that sub-letting which existed at the time the lease was made should be held to be sub-letting without the landlord's consent, *Doyle* 6934-6936 ——Reiteration of opinion that in cases where the sub-letting existed before the lease was made it is a hardship on the tenant to exclude him from sub-letting, *ib.* 7278-7285.

View of witness that a tenant ought not to be excluded from having a fair rent fixed because of a small sub-letting for labourers' cottages, *Roberts* 7666-7672 —— Expediency of abolishing, with certain limitations, the whole of the restrictions on sub-letting, *ib.* 7791-7798. 7800-7803 —Inability of witness to say whether the land occupied by holders is better cultivated than that held by tenants; belief that such is the general opinion, *ib.* 7948-7951.

Examination in regard to sub-letting; suggestion that, in cases of trivial sub-letting, the Sub-Commission should have power to admit tenants at discretion, *Greer* 8017-8021. 8107. 8243-8245. 8266-8269——Further evidence respecting the views of witness on sub-letting, his contention being that sub-letting should not prevent a tenant from having a fair rent fixed, *ib.* 8740-8757. 8869, 8870.

Inadvisability of permitting unlimited sub-letting; there are probably some instances in which the tenant might be allowed the benefit of the Act, *Shaw* 9103-9109. 9196 ——Examination as to the desirability of fixing fair rents in cases of sub letting; belief that in many instances fair rents ought to be fixed, but not in the case of middlemen who often receive from their sub-tenants rents far out of proportion to those they pay themselves, *Heard* 10005-10012.

Grounds for witness' view that extensive sub-letting should be discouraged; proposal that sub-tenants to the extent of ten or twelve acres should be made immediate tenants to the head landlord, *Bewley* 10266, 10267. 10285-10287——Undesirability of disturbing those sub-tenants who are merely sub-tenants of labourers' holdings, *ib.* 10267.

Reiteration of opinion that it would be advisable to amend the law in regard to a certain class of sub-lettings and as to a number of cases in which tenants are excluded in consequence of a portion of the holding not being within the Act; non-objection to the amount of sub-letting that must not be exceeded being fixed, *Bewley* 10749-10753. 11017-11029.

Strong objection to sub-letting on the ground that it may create congested districts; opinion that the small lettings made by a farmer to his own labourers come within the "discretion" under the Act of 1887 and should not be considered as sub-letting, *Neligan* 11489-11496—— Approval of the suggestion that, if any alteration be made in the law as to sub letting, power should be given to fix a fair rent between the sub-tenant and tenant, as well as between the tenant and the landlord, *ib.* 11497-11501.

Disapproval of sub-letting being thrown open; view of witness that where sub-letting has taken place without any protest on the part of the landlord the tenant should not be excluded from having a fair rent fixed, *Garvey* 11920. 12472-12479.

3. *Conclusions of the Committee:*

Review by the Committee of the subject of sub-letting, as a great cause of exclusion from the Land Acts, especially in Ulster; considerable difficulties of the question, *Rep.* xix.

Recommendation that sub-letting is not to be a bar to the fixing of a fair rent, and that the tenant is to be deemed in occupation of his holding, provided that the sub-letting does not impair the security for the rent, *Rep.* xx.

See also *Labourers' Cottages.*

Surrender of Tenancy. Information with reference to the power of a statutory tenant to surrender his tenancy; statement as to a judgment on this subject in the case of Torrens *v.* Cooke, *Fitz Gibbon* 3153-3155.——*See* also *Conroy* v. *Drogheda.*

T.

Temporary Convenience. Details concerning some cases illustrative of the meaning of the Act of 1881 respecting lands let for the temporary necessity or convenience of landlord or tenant; reference hereon to Whistler *v.* Delacherois, Wilson *v.* M'Cutcheon, and Finneiby *v.* Cloncurry, *Fitz Gibbon* 3254-3259——Liability of a tenant to be shut out from Court by reason of letting for temporary convenience, *Doyle* 7331, 7332——Possibility of a letting for temporary convenience being a letting for "lives," *Bewley* 10759, 10760.

Report, 1894—*continued.*

TENANT RIGHT AND OCCUPATION INTEREST:

1. *As to the Value thereof and the Prices realised on Sale.*
2. *As to the Question of Allowance in Valuing for Fair Rents.*
3. *Summary and Recommendations by the Committee.*

1. *As to the Value thereof and the Prices realised on Sale:*

Examination as to the effect of the Acts of 1870 and 1881 in making the tenant a part owner, *Bailey* 2027–2046——Valuable interests of the tenants under the Land Acts by reason of their right to compensation for improvements and to perpetual occupancy, subject to the fair rent fixed; conclusion that there should also be a right to sell these interests in the open market, *Bayly* 4287-4294——Frequency of the tenant's interest in the holding being equal to that of the landlord; instances of the former interest being the greater, the tenant being by law a part owner, *ib.* 4303. 4319–4325.

Belief that the upward tendency of the prices of tenant right outside Ulster, since the passing of the Land Act, has been checked by the drop in agricultural values, *Cunningham* 5039 *et seq.*——Opinion that the Land Commission Court has power to decide whether a tenancy is or is not a present tenancy, *Shaw* 8896. 8905–8907.

Evidence in support of the argument that the tenant has a further interest, beyond that due to his improvements, that has to be considered in fixing the fair rent, namely, his occupation interest; it was on account of this interest that Lord Justice Fitz Gibbon refrained from saying whether the surplus profit belonged to the landlord or not, *Bewley* 10215 *et seq.*; 10288–10290——Conclusion that when once a fair rent has been fixed it is only necessary for the tenant in order to preserve his continuity of interest to apply for another fifteen years' term at the end of each statutory period, *ib.* 10464 *et seq.*

Right of the tenant under the Act of 1887 to compensation for disturbance and for improvements if he acquiesces in the landlord's notice to quit, and leaves at the end of the statutory term, *Bewley* 10469–10474——Absence of any decision as to the value of the occupation interest, the question never having been raised before the Land Commission or any Sub-Commission; opinion that the Court of Appeal judgment in Adams *v.* Dunseath left the question open, *ib.* 10475–10489. 10528–10559. 10615–10619.

Evidence as to the termination of present tenancies, the tenant's interest not being increased by fixing a fair rent; desirability of there being some record kept of those cases in which "present tenants" have accepted an increased rent without having any agreement filed, *Bewley* 10774–10788——Expediency of checking, if possible, the extravagant prices paid for tenant-right in Ireland, *ib.* 11156 *et seq.*

Improvement in the prices now realised by the sale of the tenant's interest in his holding, *Garvey* 11940, 11941. 12154–12158——Evidence to the effect that the tenant's interest consists in his property in all his improvements, his occupation right, his right to sell, and the condition of the farm, *ib.* 12358–12367——Reasonableness of the prices paid for tenant-right on adjoining farms being included under "all the circumstances of the case, holding, and district," under Section 8 of the Act of 1881; *ib.* 12828——Sundry reasons why the prices of tenancies are higher in Ulster than in other parts of Ireland, *Barnes* 12942–12947.

Tabular statements submitted by Mr. Garvey and Mr. Rochfort, containing information in detail respecting sales of tenants' interests since 1st January 1882, and showing the rents, number of years' purchase, &c., *App.* 722–725.

2. *As to the Question of Allowance in Valuing for Fair Rents:*

Explanation that in fixing rents in Ulster the Sub-Commissioners took the Ulster custom into consideration, *Fitzgerald* 376-383——Practice of valuers as to allowing for tenants' right or occupancy, the amount varying greatly according to the improvements, &c., *Doyle* 2873-2875. 2904–2916.

Examination as to the course pursued by witness in dealing with tenant-right under different circumstances, due allowance being made to the tenants for improvements, *Bayly* 3856–3859——Contention that the price paid for the tenant-right of a holding in Ulster has nothing whatever to do with the fixing of a fair rent, *MacAfee* 5624–5630.

Information as to witness' practice in valuing a holding, the value of the occupation not being calculated, *O'Keeffe* 6202 *et seq.*—— Evidence to the effect that the price given for tenant-right is not taken into consideration in fixing the specified value, *Doyle* 7202–7204.

Statement that during witness' practice at the Bar the question never arose as to whether the valuations made in Court took fair account of the occupation right of the tenant, *Bewley* 10718–10725——Belief that, notwithstanding what some of the Sub-Commissioners may have stated, the general practice is to take the tenant's occupation right into account when fixing the fair rent; reiteration of previous statement that the

TENANT RIGHT AND OCCUPATION INTEREST—continued.

2. *As to the Question of Allowance in Valuing for Fair Rents*—continued.

question has never been raised judicially, *Bewley* 10853-10904. 10912-10917——Irregularity of Mr. Gray in deducting 15 per cent. in each case for occupation interest; absence of anything in the records of the Land Commission, or in any reported case, to show that any specific allowance has ever been made for occupation right, *ib.* 11335-11342.

Statement that the question of making an allowance to the tenant for occupation right, when fixing a fair rent, has never been raised before witness; contention that the County Court valuer does not take the occupation into consideration in his valuation, *Neligan* 11572-11608. 11628-11634. 11797-11827.

Practice of witness to allow for the occupation interest of the tenant when valuing holdings; opinion that the Sub-Commissioners also allow for it in their valuations, *Garvey* 11876-11879. 12728-12748——Further statement of witness' practice when calculating a fair rent to always allow for the tenant's occupation interest, his system being to make the allowance proportionate to the length of time the tenant has been in occupation; belief that the occupation interest is generally allowed for by Irish landlords, *ib.* 12613-12626. 12765 *et seq.*; 12804-12809.

Explanation that witness takes the tenants' occupation interest into consideration when fixing a fair rent; definition of the occupation interest as the difference between the judicial rent and a fair competitive rent, *Barnes* 12928-12934.

3. *Summary and Recommendations by the Committee:*

Explanation as to the Committee not having heard any witness on behalf of the tenants, *Rep.* iii——Reference to land tenure in Ireland as resting upon four principal Acts, those of 1860, 1870, 1881 and 1887; *ib.*——Durability of tenure under the Act of 1881 on certain conditions, *ib.*

Comment by the Committee upon the variation of practice as regards allowance being made for the occupation interest of the tenant; conclusion that legislation is urgently required to define and protect the interest of the tenant and to secure coherent administration of the law, *Rep.* vii, viii——Expediency of the valuation showing any deductions from the fair rent in respect of the occupancy right, *ib.* viii.

Summary of certain returns showing the very much greater selling value of tenancies in Ulster, where free sale prevails, to the general exclusion of the right of pre-emption, than in the other provinces where such rights exist, *Rep.* xvi.

See also *FAIR RENTS.* *FREE SALE.* *IMPROVEMENTS.* *Limited Owners.* *STATUTORY TERM.* *ULSTER.*

Tenants. See *the Headings generally throughout the Index.*

Tenants' Evidence (*Sub-Commission Courts*). Belief that the oath of a tenant is as reliable as that of a landlord and that Irish tenants are not untruthful witnesses, *Greer* 8389-8401——Conviction that the administration of oaths does not affect the evidence, *Shaw* 8992-8994.

Tillage. Very large proportion of tillage in Ulster as compared with Munster, improvements applying chiefly to tillage lands, *Bailey* 1690-1694——Doubt as to any tillage crops being remunerative at the present time; decline in the cultivation of cereals due to the increased cost of labour, *O'Keeffe* 6607-6616. 6798-6814. 6851-6854.

Tithe Rent Charge. Liability upon the tenant in certain cases, exceedingly few in number, to pay the tithe-rent charge, *Bailey* 2548-2551. 2612-2614.

Tolls. Reference to the tolls case of Wall *v.* Eyre when a fair rent could not be claimed owing to the tolls being a distinct subject-matter in the lease, *FitzGibbon* 3095-3097——Further reference to the point raised as to the small value of the tolls in the case of Wall *v.* Eyre; belief that the value in no way influenced the decision of the Court of Appeal, *ib.* 3162-3166.

Report, 1894—*continued.*

TOWN PARKS:

1. *Statutory Provisions and Legal Decisions upon the Question as to what constitutes a Town Park, and thus entails Exclusion from the Fair Rent Clauses of the Land Acts.*
2. *Question considered as to the Expediency or otherwise of the Exclusion of Town Parks; Conflicting Evidence on the Subject.*
3. *Summary and Recommendation by the Committee.*

1. *Statutory Provisions and Legal Decisions upon the Question as to what constitutes a Town Park, and thus entails Exclusion from the Fair Rent Clauses of the Land Acts:*

Examination with reference to town parks and the legal provisions and definition which determine the question of their exclusion from the Acts; conditions under which a town park may be brought within the Act of 1881, if used as an ordinary agricultural farm, *Bailey* 1006-1024——Reference to the decision in the case of Archer *v.* Caledon as the accepted definition of what constitutes a town park; explanation hereon as to the definition of "accommodation land adjacent to towns," *ib.* 1555-1566.

Question further considered as to what constitutes a "town park," and as to the effect of certain decisions on the subject, especially in the cases of Archer *v.* Caledon and M'Cann *v.* Downshire, *Bailey* 2235-2240——Consideration of certain conditions as to residence, &c., in connection with the question of town parks and of exemption from the Land Acts; restriction as to the owner resuming possession for building purposes, *ib.* 2293-2313.

Examination as regards the definition of town parks in connection with the question of population, witness admitting that in many instances it would be very hard on the landlords to fix purely agricultural rents, *Bailey* 2353-2379 — Attention of witness further drawn to the Judgment of Mr. Justice Bewley in the case of M'Cann *v.* The Marquis of Downshire upon the question of what constitutes a town for the purposes of the Land Acts, *ib.* 2615-2617.

Belief as regards town parks that the Land Act has not been strained as against the tenant, *Doyle* 2918-2921 — Much wider interpretation given of late years to the term "town parks," *Bayly* 4163-4168.

Unsatisfactory wording of Section 9 of the Act of 1887 relating to town parks; reference hereon to the case of Dr. Donnelly, *FitzGibbon* 3026-3033——Detailed explanation of the three conditions necessary to constitute a statutory town park, viz., residence of occupier, proximity to a town, and increased value as accommodation land, *ib.* 3168-3176.

Particulars of the case of Nelson *v.* Headford as to the date of residence; decision that if a tenant lived in a town at the time of the passing of the Act his subsequent removal therefrom would not bring him within the scope of the Act, *FitzGibbon* 3178. 3233——Further information respecting town parks as exemplified in the case of Martin *v.* Annesley, *ib.* 3179, 3180——Specimen case, viz., Rossmore *v.* Donnelly, where an appeal was refused on account of the residence not coming within the "suburbs," *ib.* 3181-3185——Further case, viz., Caruth *v.* McMahon, in which the tenant was ruled out of the Act owing to his residence being proved "suburban," *ib.* 3185-3188——Enumeration of "towns" from which Court of Appeal cases have been brought, *ib.* 3189-3192.

Further evidence showing the great difficulty of defining a "town"; explanations respecting the opinion of the Court of Appeal on this subject, *FitzGibbon* 3192-3206. 3213-3220. 3234, 3235 — Further reference to the case of Caledon *v.* Archer, which was proved to be outside of the Act owing to the strong evidence of the increased value of land, and of Goodbody *v.* Perry, which was ruled within the Act on account of the holding in question bearing an increased value to any particular tenant only, *ib.* 3206-3212.

Question as to whether the use to which land is put affects its accommodation value; as a preliminary in a case of appeal respecting town parks or demesne land the holding must first be proved to be agricultural, *FitzGibbon* 3227, 3228——Further information respecting Section 9 of the Act of 1881, whereby fair rents may be fixed on holdings that would constitute town parks provided they are let and used as ordinary agricultural farms; illustration in the cases of McNamara *v.* McNamara, Davidson *v.* Stewart, and Daly *v.* Wright, *ib.* 3229-3232.

Evidence to the effect that, in consequence of the result in Caledon *v.* Archer and of other recent decisions, the law relative to town parks has been considerably narrowed from the tenants' point of view; information as to the exact meaning of a "town" in the Land Acts, *Bewley* 10355-10372. 10405 *et seq.*

List of principal cases which have been before the Courts, *App.* 667 — Return explanatory of the exclusion of town parks, *ib.* 682.

Report, 1894—continued.

TOWN PARKS—continued.

2. *Question considered as to the Expediency or otherwise of the Exclusion of Town Parks; Conflicting Evidence on the Subject:*

Opinion that, as regards town parks, the cases to be excluded should be those where the lands are not really let for agricultural purposes, *Bailey* 1237–1244 ——Difficulty in cases where fair rents have been fixed in places not regarded as towns if, several years hence, and in consequence of recent decisions, these places were regarded as towns, *ib.* 1623–1627——Reference to the power of landlords to resume possession of land in town parks, the tenants not having any provisions of the Act of 1881 in their favour, *ib.* 1635–1639.

Absence of any special rule for the guidance of valuers as regards uniformity in the case of town lands, *Bailey* 1688, 1689——Exceptional instances of occupiers of town parks having no other occupation than their cultivation, *ib.* 2686-2690.

Belief that if the artificial boundary with regard to town parks were removed altogether a great deal of friction would be prevented, *MacAfee* 5676-5680. 5835, 5836. 5885-5895——Desirability of abolishing the town park theory, provided that proximity and accommodation value be not lost sight of, *O'Keeffe* 6044–6048——Friction and discontent caused by the town park principle; non-objection to the Sub-Commissioners having power to deal with the agricultural part of non-agricultural holdings under the fair rent provisions, *ib.* 6232–6237. 6292–6294. 6313, 6314.

No doubt that the abolition or contraction of town parks would interfere very much with the accommodation of the inhabitants of the town; belief that the present rents are too low in town parks, *Doyle* 6911–6913. 6981–6988 —— Opinion that rents fixed in town parks are unfair, having regard to the accommodation value; impression that the Sub-Commissioners fixed the rents on the assumption that the holdings were agricultural ones, with proximity value, *ib.* 7059–7062. 7305–7325.

Opinion that a town is improved and property increased in value by the exclusion of town parks from the Land Act, *Roberts* 7977, 7978. 7992–8001——View of witness that the Commissioners should be entitled to fix fair rents upon town parks, *Greer* 8031–8034. 8122-8124. 8193–8195——Practicability of fixing a rent on town parks; contention that an agricultural rent would not create a tenant-right on such holdings, *Greer* 8692–8695. 8783–8803.

Discussion regarding town parks; opinion that where land is occupied by a *bonâ fide* agricultural tenant it should not be deemed a town park, and that the law should not interfere on behalf of people who use the land for the purpose of luxury, *Shaw* 9156–9167. 9204–9220——Competency of witness to fix a fair rent, if necessary, on a town park, *Heard* 9996–9999.

Grounds for the opinion that town parks ought not to come within the purview of the Act at all; submission that lands that would be town parks if let to a farmer living in the town should not come within the Act if used as dairy farms, *Bewley* 10270–10272 ——Desirability of a legislative decision upon the question of town parks; suggestion that the only solution of the difficulty in regard to a "town" is a population limit, *ib.* 10411, 10412.

Disapproval of a proposal to fix agricultural rents on all town parks; illustration of the working of the provision that the tenant must have been living in the town at the passing of the 1881 Act, *Bewley* 11113–11126——Suggestion that the population limit in regard to town parks should not be a very high one; personal opinion of witness that town parks should be excluded from the Act, whatever limit be adopted, *ib.* 11190–11194.

Information as to the cases of town parks that have come before witness, showing why each was decided in favour of the tenant; approval of the operation of the Act being still strictly limited to agricultural or pastoral holdings, *Neligan* 11473–11477. 11685–11693.

View of witness that it would be a very great hardship both on owners of properties and the inhabitants of towns if town parks be converted into agricultural holdings; considerable demand for town parks round the town of Birr, *Garvey* 11914–11919. 12083–12109——Decided belief that it would be very disastrous to the towns if the fields round about them were turned into agricultural holdings; reiteration of the opinion that town parks ought to be excluded from the Act, *ib.* 12480–12498. 12810–12818—— Grounds for disapproving of the suggestion to abolish town parks as regards exclusion, *Barnes* 12971–12974.

3. *Summary and Recommendation by the Committee:*

Review of the provisions in the Acts of 1870 and 1881 on the subject of town parks; conflicting decisions as to the definition of the term not under the foregoing Acts but under the Act of 1887, *Rep.* xvii, xviii.

Recommendation that no place be considered a city or town within the meaning of the sub-section excluding town parks, unless it has a population exceeding 2,000, *Rep.* xix.

True

True Value. See *SPECIFIED VALUE AND TRUE VALUE.*

TURBARY:

Considerable difficulty upon the question of turbary, the Sub-Commissioners having no jurisdiction where the landlord separates the turbary from the holding, *Bailey* 709–716—— Outline of the action of the Sub-Commissioners in dealing with questions of turbary; numerous cases in which they have nothing to do with turbary in fixing the fair rent, the landlords having power in such cases to enforce unduly large payments for turbary, *ib.* 1255–1262.

Frequent question whether the right of turbary attaches to a holding; procedure in such cases, *Bailey* 2110-2113—— Special provision made in large estates for division of the turbary, there being no turbary at all in many districts, *ib.* 2552–2556—— Instances of landlords having segregated the turbary though within the ambit of the farm; power to do so only when the turbary is detached from the holding, *ib.* 2681–2685.

Circumstances under which turf is taken into consideration as affecting the value, *Bayly* 3577–3582—— Information on the subject of turbary, witness referring to some exceptional cases of hardship to tenants, and suggesting that in any amendment of the law a remedy should be provided, *Cunningham* 4512–4520—— Powerlessness of the Land Commission to prevent an undue charge for turbary when outside the ambit of the holding; restriction desirable, *ib.* 4516–4520.

Explanation that in certain cases in which an increased charge for turbary was made after a reduction of rent by the Land Commission, there was no intention on the part of witness to convey the impression that the landlords went behind the back of the Sub-Commission and recouped themselves after a fair rent had been fixed, *Cunningham* 5084-5100. 5118–5132—— Witness is not aware of any cases in which landlords have recouped themselves by charges on turbary after they have had the rent reduced on the holding, *MacAfee* 5611–5613.

Opinion that in cases where the tenant is prevented from coming into Court by fear of losing some right of turbary, grazing, commonage, or seaweed, the Sub-Commission Court should have the power, wherever such a right existed on the estate, of securing it as appurtenant to the holding, *MacAfee* 5814–5816; *O'Keeffe* 6194–6195. 6547–6554.

Explanation in regard to the rights of turbary that witness objects to the proposal to always include the turbary as part and parcel of the holding, on the ground that it is wrong to compel anyone to part with property, even at a fair price, *Shaw* 8966–8972. 9153–9165.

Grounds upon which the Committee conclude that when the turbary is outside the ambit of the holding, the Commissioners should have power, in cases where the tenant has hitherto been allowed to cut turf, to secure the right to the tenant on such terms as they may think fit, *Rep.* xxii.

U.

ULSTER:

Degree of difficulty in the earlier years through Sub-Commissioners having been sent to Ulster who were not conversant with the local custom; this does not now apply, *Fitzgerald* 616–622——Presumption, as regards improvements, in favour of the tenant in all cases under the Ulster custom, *ib.* 866. 1456–1458. 2003, 2004——Reference to the definition of the Ulster custom by Mr. Blake (chairman of the county of Fermanagh); five leading features of the custom, *ib.* 1245-1248——Definition given to the custom by the present Master of the Rolls in Ireland; several essentials according to this definition, *ib.* 1248.

Different usages on different estates in Ulster, the custom not being universal throughout the province, and the onus of proof as to the existence of the custom being with the tenant, *Bailey* 1249, 1250—— Several advantages of Ulster custom-holding tenants under the Act of 1881, as compared with other tenants; much better position of the former class as regards claims for improvements, *ib.* 1251–1254——Exemption of tenants, holding under the Ulster custom, from the obligations under the Land Act as to selling to the landlords at the true value; question considered hereon as to the expediency of all Irish tenants being placed upon the same footing in regard to free sale, &c., *ib.* 1428–1455.

Great variation in the Ulster usages in different districts, it being necessary to prove their existence and their force in the case of each holding, *Bailey* 1591–1600——Explanations with further reference to the Ulster custom, and the different conditions and usages which exist on different estates on the question of free sale, &c., *ib.* 1780–1792 ——Non-application of the decision in the case of Adams *v.* Dunseath to holdings under the Ulster custom, *ib.* 2837, 2838.

Detailed explanation of the effect of the Act of 1870 as regards Ulster usages and the rights of ordinary tenants in respect of compensation, *FitzGibbon* 2978–2992—— Explanation that the Ulster custom did not apply in the Judgment in Adams *v.* Dunseath, *ib.* 3493–3496.

Report, 1894—*continued.*

ULSTER—continued.

Advantage as regards improvements and facility of sale of those tenants who can prove they are under the Ulster custom, witness seeing no reason for this distinction, *Bayly* 4058–4066. 4272–4277. 4293, 4294——Full knowledge of witness and other Sub-Commissioners as to the Ulster custom, *ib.* 4454–4461.

Opinion that the Ulster custom has not had the effect of lowering rents, *Cunningham* 4533——Explanation that in witness' experience the Ulster-custom tenant has to prove his improvements like any other tenant, and that if he had to prove the custom he would have a more difficult task than proving the improvements themselves, *ib.* 4688–4707. 4779–4827.

Obligation of the tenants to prove all the improvements they claim, whether in Ulster or not; explanation that an Ulster-custom tenant is not required to prove the erection of buildings, *MacAfee* 5762–5775—— Belief that no usage corresponding to the Ulster custom exists in Leinster, Munster, and Connaught, *O'Keeffe* 6056–6062.

Prejudicial effect on the incoming tenants, under the unrestricted Ulster custom, of the high prices they pay for the holdings; frequency of changes of tenancy in Ulster *Doyle* 7229–7237——Statement as to witness not being aware of any tenant having to prove the custom in Ulster, except to avoid having a specified value fixed, *ib.* 7415, 7416——Necessity of the Ulster tenants proving their improvements; explanation that the presumption of improvements in favour of the tenant in Ulster only refers to visible improvements, *ib.* 7417 *et seq.* 7460–7462.

Much higher selling value of tenancies in Ulster, where there is free sale, than in the other provinces where the right of pre-emption prevails, *App.* 722-725; *Rep.* xvi.

Conclusion of the Committee that as regards improvements holdings in Ulster should be deemed subject to the Ulster custom, *Rep.* xv——Exemption of holdings under the Ulster custom from the provisions as to the sale at the specified value, *ib.*——Option exercised by the Ulster tenant of selling his holding under the custom, so as to avoid the exercise of a right of pre-emption by the landlord, *ib.*

See also *TENANT RIGHT AND OCCUPATION INTEREST.*

V.

VALUERS AND VALUATION:

1. *Generally as to the Practice in connection with the Sub-Commission Courts.*
2. *Explanations respecting the Practice in connection with the County Courts.*
3. *Conclusions of the Committee.*

1. *Generally as to the Practice in connection with the Sub-Commission Courts:*

Practice as to re-valuation by two appeal valuers, who are, as a rule, Sub-Commissioners, their Report and field book being before the Commissioners; several other valuations also before the latter, *Fitzgerald* 105–108. 115–144. 153–158. 161–172——Similar principles observed by the appeal valuers and the Sub-Commissioners in arriving at the annual value, *ib.* 574–577—— Objectionable practice of valuation from 1881 to 1886, *ib.* 606–615—— Circumstances under which the Report of one appeal valuer may be adopted (without an appeal being heard) over-ruling the judgment of two Sub-Commissioners, *ib.* 623–626.

Practice of the Central Commission in regard to sending appeal valuers to any county without consulting them in the matter, *Bailey* 1851–1855.

Approval of the rule being made compulsory as to landlord and tenant consenting that the fair rent shall be determined by a valuer or valuers appointed by the Land Commission; frequent ignorance on the part of tenants respecting the existing rule, *Bayly* 3902-3920.——Very little advantage in numerous cases from the hearing before the Sub-Commission where there is no law involved; simple procedure desirable to be completed before the valuer, *ib.* 3910–3920.

Practice of witness to value the holding as it stands without reference to any latent qualities in the soil which might under treatment produce an increased value, *Cunningham* 4511, 4512——Evidence to the effect that witness values improvements in exactly the same way, whether he is acting as Appeal Court valuer or as an ordinary lay Sub-Commissioner; details as to his *modus operandi*, his action being quite independent and free, *ib.* 4554 *et seq.* 4840–4855. 4876–4891. 4906–4939. 4975–4992.

Explanation that when witness has drawn up his Report and sent it to the Land Commissioners he has no further communication with them; return of his Report for further particulars in one instance only, *Cunningham* 4575-4578.——Endeavour of witness to make due allowance for the time of year at which he sees the farms when valuing them, *ib.* 4837–4839.

Details

VALUERS AND VALUATION—continued.

1. *Generally as to Practice in connection with Sub-Commission Courts*—continued.

Details as to the method pursued by witness in inspecting and valuing farms as an Assistant-Commissioner, *MacAfee* 5362 *et seq.* 5510 *et seq.*——Information as to the way in which witness values a holding, the value of the tenant's occupation right not being calculated in the rent; statement hereon that when two lay Sub-Commissioners differ the matter is settled by the legal Assistant-Commissioner, *O'Keeffe* 6202-6229. 6247-6289. 6299-6309. 6333 *et seq.*; 6363-6581. 6488 *et seq.*

Reference to the general practice of tenants and landlords in employing valuers; necessity for exercising an independent judgment owing to such valuers being influenced by their clients, *Roberts* 7 7437751. 7957-7960. 7985-7991.——Suggestion that where the valuation of the Court valuer approaches to within five per cent. of the rents fixed by the Assistant Commissioners it is injudicious to make any difference, *ib.* 7865-7867.

Particulars of the case of Mr. Wilson in County Antrim in which a fair rent of 120*l.* fixed by the Sub-Commissioners was increased to 130*l.* on the Report of a Court valuer, (Mr. Jephcott), *Greer* 8723-8727.

Impracticability of the suggestion that there should be distinct rules laying down a uniform system of valuing various sorts of farms, *Garvey* 12223-12226 —— Details as to witness' procedure in valuing a farm, it always having been based upon the same principles; estimate that the rent ought to be about one-third of the estimated amount of the produce, *ib.* 12589 *et seq.*

Form of particulars to be filled up in valuers' Report as to fair rent, *App.* 668.

Form showing the particulars of holding taken into consideration in fixing the judicial rent, distinguishing between the different classes of grass land and of tillage, *App.* 675, 676.

2. *Explanations respecting the Practice in connection with the County Courts:*

List of County Court valuers fixed by the Commissioners in 1887 with the sanction of the Lord Lieutenant, valuers being selected from this list by the County Court Judges, *Fitzgerald* 627-630.

Practice in the County Court presided over by witness for the valuer to make his Report before the hearing of a case; the Report is the absolutely unfettered judgment of the valuer, and is rarely affected by subsequent evidence in Court, *Shaw* 8978-8986. 8991. 9085-9089. 9133, 9134. 9174-9178. 9181-9185—— Explanation of the method followed by the valuer in Kerry in fixing a fair rent; belief that the main principle considered is what a solvent tenant would be willing to pay from year to year with a liberal allowance for tenant's improvements, *ib.* 9004-9017. 9090-9092. 9139-9152. 9179, 9180. 9231-9233. 9243-9247.

Grounds for objecting to the payment of the County Court valuer by fees, *Shaw* 9044-9048. 9060—— Explanation that the County Court valuers are selected by the Land Commission, and may be changed at the discretion of the Judge, *ib.* 9168-9173.

Detailed information respecting the proceedings taken by witness as County Court valuer in making a valuation; the values of each field are scaled roughly on the spot and credit is given to the tenant for any improvements made by him, *Heard* 9255-9257. 9267-9275. 9339, 9340. 9738-9744. 9906-9910. 9925-9929. 9937-9939 —— Opinion that two valuers should be sent to make valuations, *ib.* 9263-9266. 9312-9314. 9493. 10043-10046—— Infrequency of cases in which the valuer is requested by the Judge to make a re-valuation; instance of a boundary case in which witness was sent back three times to value the property, *ib.* 9306-9311. 9945-9947.—— Statement that the evidence taken in Court rarely alters the facts brought before the valuer on his inspection, *ib.* 9245-9299. 9386-9388.

Evidence showing that there is usually a great difference between the valuations given by the landlord's and the tenant's valuers, *Heard* 9339-9394. 9886-9888. 9960, 9961—— Explanation that a tenant generally pays a valuer a guinea per day, and that a valuer employed by a landlord receives three guineas daily, *ib.* 9395-9403—— Disapproval of moving valuers from district to district, *ib.* 9508-9510——Explanation that witness is paid for such days as he is acting as valuer, but receives no permanent salary, *ib.* 9513-9518. 9930-9936.

Evidence showing that many of the rents reduced by witness were the old competition rents that prevailed before the Act of 1870, *Heard* 9678-9689. 9704-9706. 9867-9875 ——Explanation that witness is permitted to act privately as valuer in addition to his County Court duties at Cork, and frequently values for landlords in the Sub-Commission Court; reference to an instance in which a rent valued by witness for the landlord was reduced by from 5 to 7½ per cent. by the Sub-Commission Court, *ib.* 9876-9905. 9962-9964. 9968-9974.

Question as to the effect of the weather on a valuation; belief that it might influence an inexpert valuer, but that, as a rule, extreme weather is avoided, *Heard* 9916-9921—— Explanation that the time taken in making a valuation depends entirely upon the class of land to be valued, *ib.* 9922-9924.

Report, 1894—*continued.*

VALUERS AND VALUATION—continued.

2. *Explanations respecting the Practice in connection with the County Courts*—contd.

Statement that witness, as County Court Judge, leaves his valuers perfectly free as to the method by which they arrive at their valuation, only directing them to make the valuation as minute as possible, *Neligan* 11456-11458. 11560 *et seq.*

3. *Conclusions of the Committee:*

Recommendation that in any case in which the parties so desire a holding should be inspected by one or two valuers, in advance of the hearing of the case by the Sub-Commission, such valuation, if accepted by the parties, to be fixed as the fair rent for the statutory term, *Rep.* vi——If either party declines to accept the valuation the case would be heard by the Sub-Commission in the ordinary course, and such hearing would serve as an appeal, *ib.*

Comment by the Committee upon the absence of any fixed principle or uniform mode of valuation, *Rep.* vii.

See also *APPEALS AND RE-HEARINGS. BUILDINGS. COSTS. COUNTY COURTS. DETERIORATION OF HOLDINGS. Drainage. FAIR RENTS. IMPROVEMENTS. Inspection of Holdings. PRICES. Produce. RECLAMATION OF WASTE LAND. SPECIFIED VALUE AND TRUE VALUE. STATUTORY TERM. SUB-COMMISSIONS. TENANT RIGHT AND OCCUPATION INTEREST. TOWN PARKS. TURBARY. ULSTER.*

Voluntary Arrangements (*Landlord and Tenant*). See *AGREEMENTS AND VOLUNTARY ARRANGEMENTS.*

W.

Water Supply. Statement that it is the practice to take water supply into account in making a valuation, *Heard* 9984-9987.

Watson v. *Abercorn.* Evidence showing that in a recent case, Watson *v.* Abercorn, the decision of the Land Commission was reversed, and agricultural land was adjudged to be demesne, *FitzGibbon* 3121-3125——Particulars with further reference to the case of Watson *v.* Abercorn; unanimity of the Judges in the decision arrived at, *ib.* 3166, 3167.

Wheat. Evidence to the effect that the value of the land in Ireland is considerably less now that wheat has practically gone out of cultivation; slight increase in the value due to spade cultivation, *O'Keeffe* 5977-5991. 6396-6403.

Willis, Gilbert de K. (Analysis of his Evidence.)—Explanation respecting the Return of sales of tenant rights in various counties of Ireland, handed in by Mr. Garvey; this Return does not represent the whole of the sales in any county, 13009-13017.

Withdrawal of Applications (*Fair Rents.*) Difficulty in stating the reasons why cases are withdrawn or dismissed, or the rental represented by such cases, *Fitzgerald* 496-501——Considerable number of cases withdrawn by the tenants for various causes, such as threats of eviction, fear of appeal, &c., *Bailey* 1390-1394.——*See* also *FAIR RENTS.*

Y.

Yearly Tenancies. Evidence respecting the effect of the Act of 1881 on tenancies from year to year; belief that such tenants are entitled to surrender their holdings, *FitzGibbon* 3000-3002——Exceptional cases as to the conditions of leases which are applicable to constitute a tenancy from year to year; examples quoted in the cases of Barton *v.* Atkinson and Bolton *v.* Barry, *ib.* 3460-3469——Belief that the question of "leaseholder," or "tenant from year to year," is now immaterial, *ib.* 3472-3475.

K 2 6 MAY 1971